Nov 22 1875

5-297

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 118.

THE EASTERN TRANSPORTATION LINE, PLAINTIFF IN ERROR,

vs.

PATRICK F. HOPE.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

Supp

FILED SEPTEMBER 14, 1875.

Nov 24 1875
Coburn
for Hunt

SUPREME COURT OF THE UNITED STATES.

No. 118.

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1, 2 UNITED STATES OF AMERICA,
Eastern District of Pennsylvania, ss:

Pleas and proceedings before the honorable the judges of the circuit court of the United States for the eastern district of Pennsylvania, in the third circuit, of October session, 1873, No. 36.

It is thus contained:

Be it remembered that on the sixth day of November, in the year of our Lord one thousand eight hundred and seventy-three, George W. Biddle, esquire, comes into our said court here and files the record, an exemplification of the record of proceedings in the district court
3 for the city and county of Philadelphia, in the State of Pennsylvania, wherein Patrick F. Hope is plaintiff and the Eastern Transportation Company is defendant which exemplification, being read and filed, is in the words and of the tenor following, to wit:

4 STATE OF PENNSYLVANIA,
City and County of Philadelphia:

[SEAL.] In the district court for the city and county of Philadelphia it is contained of record as follows, to wit:

Docket entries.

March term, 1873.

PATRICK F. HOPE
vs.
THE EASTERN TRANSPORTATION COMPANY. } 1921.

Sum's case. Exit. April 9, 1873. Ret. Monday, May, 1873. Served.

J. W. Coulston, Geo. W. Biddle, May 9, '73.

5 June 4, 1873. Rule to declare filed.
June 16, 1873. Narr. and rule to plead filed.
June 25, 1873. Plea filed.
Oct. 28, 1873. Petition & aff. for removal of cause into the circuit court of the U. S. filed.
Oct. 29, 1873. Rule to remove case to the circuit court of U. S.
Oct. 29, 1873. Waiver of security required by act of Congress in case of the removal of an action in a State court to the circuit court of the United States filed.
Nov. 1, 1873. Rule absolute.

6 CITY AND COUNTY OF PHILADELPHIA, *ss:*

The Commonwealth of Pennsylvania to the sheriff of Philadelphia County, greeting:

We command you that you summon The Eastern Transportation Company, late of your county, so that they be and appear before our judges, at Philadelphia, at our district court for the city and county of Philadelphia, to be holden at Philadelphia, in and for the said city and county of Philadelphia, the first Monday of May next, there to answer Pat-

rick F. Hope of a plea of trespass on the case, etc. And have you then and there this writ.

Witness the honorable J. I. Clark Hare, doctor of laws, president of our said court at Philadelphia, the 9 day of April, in the year of our Lord one thousand eight hundred and seventy-three.

[SEAL.] JA'S W. FLETCHER,
Pro Prothonotary.

7 (Endorsed on the side:) Served The Eastern Transportation Company by giving a true and attested copy of the within writ to E. Roberts, president of said company, and making known to him the contents thereof. April 9, 1873. So answers John F. Pole, dep. sheriff. W'm R. Leeds, sheriff.

(Endorsed on the back:) 1921. M'ch term, 1873. Patrick F. Hope vs. The Eastern Transportation Company. Summons case. J. Warren Coulston.

8 In the district court for the city and county of Philadelphia.

PATRICK F. HOPE
vs.
THE EASTERN TRANSPORTATION COMPANY. } March term, 1873. No. 1921.

Enter my appearance for defendants in above-entitled cause.

GEO. W. BIDDLE,
Per G. W. M., *Att'y for Deff.*

MAY 9, '73.

To P. D. C.

9 (Indorsed:) 1921. March, 1873. Hope vs. Eastern Transportation Co. D. C. Order of entry of appearance for def'd'ts. Filed May 9, '73. Geo. W. Biddle.

10 PATRICK F. HOPE
vs.
THE EASTERN TRANSPORTATION COMPANY. } D. C. No. 1921. March term, 1873.

Enter a rule on the plaintiff in above case to declare in eight days or judgment sec. reg.

GEO. W. BIDDLE,
Per W.

JUNE 4, 1873.

P. D. C.

11 (Indorsed:) 1921. March, 1873. Hope vs. The Eastern Trans. Comp'y. D. C. Rule to declare, &c. Filed June 1, 1873. Geo. W. Biddle.

12 In the district court for the city and county of Philadelphia of March term, 1873. No. 1921.

City and county of Philadelphia, ss:

Patrick F. Hope, by T. Warren Coulston, his attorney, complains of the Eastern Transportation Company, who have been summoned to answer the plaintiff on a plea of tresspass on the case, &c.

For that whereas heretofore, to wit, on the 14th day of March, A. D. 1873, the defendants were common carriers of goods and chattels for hire, to wit, from New York City to New Haven, Connecticut, to wit, at the county aforesaid; and they, the said defendants, then and there received from the said plaintiff divers goods and chattels, to wit, one canal-barge or vessel of the said plaintiff called the Mary E. Loughney, of great value, to wit, of the value of five thousand dollars, to be carried for him, the said plaintiff, by them, the said defendants, as such
13 common carriers as aforesaid, from New York City to New Haven, Connecticut, and at New Haven, Connecticut, aforesaid, to be delivered by the defendants for the plaintiff for certain reward to the defendants, and it then and there became and was the duty of the defendants safely and securely to transport and carry and deliver the said barge, as aforesaid; yet the said defendants, not regarding their duty in this behalf, did not safely or securely deliver the said barge for the said plaintiff, but then and there so negligently, carelessly, and improperly behaved and conducted themselves in that behalf, that by and through the negligence, carelessness, and improper conduct of the said defendants and their servants in this behalf, the said barge was wholly lost to the plaintiff, to the great loss and injury and damage of the plaintiff of, to wit, ten thousand dollars.

14 And also for that, whereas heretofore, to wit, on the day and year aforesaid, to wit, of the city of New York, to wit, at the county aforesaid, the plaintiff, at the special instance and request of the said defendants, delivered to the said defendants a certain barge or vessel of the plaintiff, called the Mary E. Loughney, of great value, to wit, of the value of five thousand dollars, with a large quantity of coal laden on said barge, to wit, two hundred and fifty-six tons of coal of great value, to wit, of the value of two thousand dollars, to be by them, the defendants, towed and conducted by the steam tug-boat Game Cock, of the defendants, from a certain place, to wit, New York City to New Haven, Connecticut, to wit, at the county aforesaid, for certain reasonable reward therefore, paid by the plaintiff to the defendants; and it thereby then and there became, and was, the duty of the defendants to tow and conduct the said barge or vessel of the said plaintiff,
15 with the said coal thereon laden as aforesaid, from New York to New Haven, as aforesaid, with all possible dispatch, and to use all proper care and skill in and about the towing, conducting, and delivery of the said barge of the said plaintiff, with the cargo laden thereon as aforesaid, from New York to New Haven; but wholly neglected their duty in the premises, and then and there so carelessly, negligently, unskilfully, and improperly conducted themselves, with respect to the towing and conducting of the said barge, with the coal thereon laden as aforesaid, that the said barge and the coal thereon laden, to wit, two hundred and fifty-six tons of coal, by and through the carelessness, negligence, and default of the defendants in that behalf, then and there became, and were, totally lost and sunk, to the great loss of the plaintiff, and to his damage, to wit, ten thousand dollars.

And also for that, whereas heretofore, to wit, on the day and
16 year aforesaid, at the city of New York, to wit, at the county aforesaid, the plaintiff, at the special instance and request of the defendants, delivered to the said defendants a certain other barge or vessel of the plaintiffs called the Mary E. Loughney, of great value, to wit, of the value of five thousand dollars, and a large quantity of coal, to wit, two hundred and fifty-six tons of coal laden on the said barge, of great value, to wit, of the value of two thousand dollars, to be carried

for him, the said plaintiff, by the said defendants as such carriers as aforesaid, from New York to New Haven, to wit, at the county aforesaid, & at New Haven aforesaid to be delivered by the said defendants to the said plaintiff, for certain reward to the said defendants in that behalf; and it then and there became and was the duty of the said defendants safely and securely to transport, carry, and deliver the said barge and the said coal laden thereon as aforesaid; yet the said
17 defendants, not regarding their duty in this behalf, did not safely and securely transport, carry, and deliver the said barge and the said coal laden thereon for the plaintiff, but then and there so negligently, carelessly, and improperly behaved and conducted themselves in this behalf that by and through the negligence, carelessness, and default of them the defendants in the premises, the said barge, with her tackle, apparel, and furniture, and the said coal laden thereon, and also the personal clothing of the said plaintiff of great value, to wit, of the value of one hundred dollars, were sunk in the waters of Long Island Sound, to wit, at the county aforesaid, & totally lost to the plaintiff; and also by reason of the premises, the said plaintiff lost and was deprived of a large sum of money, to wit, of the sum of three hundred dollars, which he otherwise might and would have acquired as freight and reward for delivering the said coal at New Haven as aforesaid, to
18 wit, at the county aforesaid, to the damage of the said plaintiff of ten thousand dollars; and therefore he brings his suit, &c.

J. WARERN COULSTON,
Att'y for Pl'ff.

19 (Indorsed:) 1921. Mc'h t., 1873. D. C. Hope vs. the Eastern Transportation Co. Narr. Enter rule to plead in 8 days or judg't sec. reg. Filed June 16, 1873. J. Warren Coulston, att'y for pl'ff.

20 HOPE *vs.* EASTERN TRANSPORTATION COMPANY. } D. C. 1921. March term, 1873.

Defendants plead "not guilty."

GEO. W. BIDDLE,
Per J. J. W.

6—25, '73.

P. D. C.

21 (Indorsed:) 1921. March, 1873. Hope vs. The Eastern Transp. Co. D. C. Plea. Filed June 25, 1873. Geo. W. Biddle.

22 In the district court for the city and county of Philadelphia.

PATRICK F. HOPE *vs.* THE EASTERN TRANSPORTATION LINE. } March T., 1873. No. 1921.

To the honorable the judges of the district court aforesaid:

The petition of the Eastern Transportation Line, the corporation defendant above named, respectfully represents:

I. That the plaintiff in the above-entitled suit is a citizen of the State of Pennsylvania.

II. That the corporation defendant in the above-entitled cause is a

citizen of the State of New York, duly chartered under the laws thereof.

23 III. That the matter in dispute in the above-entitled cause exceeds the sum of five hundred dollars, exclusive of costs.

IV. That the corporation defendant has reason to and does believe that from prejudice and local influence they will not be able to obtain justice in the State court above named, in which this suit is brought.

V. That the corporation defendant has filed an affidavit in the district court aforesaid, hereto annexed, marked "A," stating that the said corporation defendant has reason to and does believe that from prejudice and local influence will not be able to obtain justice in the said court. The said affidavit was filed on the 28th day of October, 1873, before the final hearing on trial of this suit.

VI. That by agreement between counsel in the above-entitled cause, the security required by the act of March 2, 1867, for

24 entering in the circuit court of the United States for the eastern district of Pennsylvania, on the first day of its next session, copies of all process, pleadings, depositions, testimony, and for other proceedings in this suit, and for doing such other appropriate acts as by the act to which the act of March 2, 1867, is amendatory, are required to be done upon the removal of a cause into the United States court, is waived.

FRED. ROBERT, *Pres't.*

25 PATRICK F. HOPE
vs.
EASTERN TRANSPORTATION LINE. } D. C. M. T., 1873. No. 1921.

Frederick W. Robert, being duly sworn according to law, says:

I am the president of the corporation defendant. I have reason to and do believe that from prejudice and local influence the said corporation defendant will not be able to obtain justice in the State court above named, in which the above-mentioned suit is brought; that all the facts stated in the foregoing petition are true, to the best of my knowledge and belief; that the seal hereto affixed is the corporate seal of the said corporation defendant.

[L. S.] FRED. ROBERT, *Pres't.*

26 Subscribed in my presence and sworn to before me at the city of New York, in the county and State of New York, on this 24th day of October, A. D. 1873, by the before-named Frederick Roberts.

In witness whereof I have here*tofore* set my hand, affixed my official seal.

[L. S.] CHARLES WETTLETON,
Commissioner for Pennsylvania in New York.

(Indorsed:) 1921 M., 1873. Hope vs. Eastern Transp. Line. D. C. Petition & affidavit for removal of cause into the circuit court of the U. S. Filed Oct. 28, '73. To P. D. C. G. W. Biddle.

28 In the district court for the city and county of Philadelphia.

HOPE
vs.
EASTERN TRANSPORTATION LINE. } M. term, 1873. No. 1921.

And now, October 29th, 1873, on motion of A. Sydney Biddle, counsel for defendant, the court grant a rule returnable November 1st, 1873,

on plaintiff, to show cause why the above cause should not be removed into the circuit court of the United States for the eastern district of Pennsylvania, on affidavit and petition filed as provided by act of Congress, March 2nd, 1867, it appearing to the court that the security required by said act has been waived by the plaintiff.

(Endorsed:) 1921. M. term, 1873. Hope vs. Eastern Transportation Line. D. C. Motion for rule to remove record to U. S. circuit court. Filed Oct. 29, 1873. A. Sydney Biddle.

29 In the district court for the city & co. of Phila.

HOPE
vs.
EASTERN TRANSPORTATION LINE. } M. term, 1873. No. 1921.

I hereby agree in the above case to waive the security required by the act of Congress of March 2nd, 1867, for the entering copies of all process, pleadings, depositions, testimony, and other proceedings in said suit, and for the doing of such other appropriate acts as by the act to which said above-entitled act is *is* amendatory are required to be done upon the removal of an action from a State court into the circuit court of the United States.

J. WARREN COULSTON,
Counsel for Plaintiff.

(Endorsed:) 1921. March term, 1872. Hope vs. Eastern Transportation Line. D. C. Waiver of security required by act of Congress in case of the removal of an action in a State court to the circuit
30 court of the U. S. Filed October 29, 1873. A. Sydney Biddle.

I certify the within and foregoing to be a true and correct copy of the whole record of the case therein stated, as the same remains in the office of the prothonotary of the district court for the city and county of Philadelphia.

In witness whereof I have hereunto set my hand and affixed the seal of the said court this 6th day of November, A. D. 1873.

W. H. BENCKERT,
Pro Proth'y.

31 And afterwards, to wit, on the eleventh day of December, one thousand eight hundred and seventy-four, the said defendants, The Eastern Transportation Line, by George W. Biddle, esq., their attorney, come into our said court here and enter a rule for a commission, & file interrogatories as follows:

In the circuit court of the United States for the eastern district of Pennsylvania, of October sessions, 1873.

PATRICK F. HOPE
vs.
THE EASTERN TRANSPORTATION LINE. } No. 36.

Enter a rule on the plaintiff in the above case for a commission to be issued to William H. Willis, j'r, of the city of New York, in the State

of New York, to take the testimony of witnesses on the annexed interrogation to be read on the trial of the case.

GEORGE W. BIDDLE.

Dec. 11th, 1784.

To Col. SAMUEL BELL,
Clerk of said Court.

32 In the circuit court of the United States for the eastern district of Pennsylvania. Of October sessions, 1873, No. 36.

PATRICK F. HOPE
v.
THE EASTERN TRANSPORTATION LINE.

Interrogatories to be administered to Robert Fletcher, of Jersey City, in the State of New Jersey, a witness to be produced, sworn, and examined under and by virtue of the annexed commission, before William H. Willis, j'r, notary public, the commissioner therein named, in a certain cause depending in the circuit court of the United States for the eastern district of Pennsylvania, wherein Patrick F. Hope is plaintiff, and the Eastern Transportation Line is defendant, on the part of the said defendant:

First interrogatory. What is your name, age, and occupation; and where do you reside?

33 Second interrogatory. Do you know either of the parties to this action, the plaintiff or the defendant? State which of them. State how long you have known these parties, or either of them, and which of them.

Third interrogatory. What was your occupation, and in whose employ were you from January 1st to July 1st, 1873? How long have you been engaged in your present occupation?

Fourth interrogatory. Were you a captain of one of the tow-boats of the defendants, directed by defendant to tow a certain barge or vessel, called the Mary E. Loughney, from New York City to New Haven, Connecticut, in or about the month of March, 1873? If so, state your recollection of the date of departure with that tow, and the number and names of barges you had in tow besides the said Mary E. Loughney, and the names of their owners or captains.

34 Fifth interrogatory. If you shall have answered that you were captain of a tow-boat in March, 1873, and did, on or about March 14th, 1873, have in tow, among others, a barge or vessel called the Mary E. Loughney, state if you remember the alleged sinking of the said barge. If yea, did you witness the sinking, and at what place or point did it occur; where were you at the time of the sinking; who others, if any, were present at the time and witnessed the occurrence, and where were they?

Sixth interrogatory. Did the owner, or any person representing him, go with the Mary E. Loughney when she started in your tow from New York City on this trip? If so, then state who was on board of her.

Seventh interrogatory. If you shall have answered to the fifth interrogatory that you remember the occurrence of the alleged sinking of the Mary E. Loughney, and witnessed the same, state all that you saw of the alleged sinking immediately prior to and during the occurrence of the same.

Eighth interrogatory. State if you have had much experience in

35 the management of canal boats or barges. State if you are perfectly familiar with the management, construction, and equipment of canal boats and barges. If you shall answer yea to the preceding question, state, if you know, what was the condition of the barge or vessel Mary E. Loughney at the time of leaving New York City in your tow on the trip referred to herein, in so far as respects her sea-worthiness, staunchness, and the condition of her tackle, apparel, and furniture, and what was the source of your knowledge.

Ninth interrogatory. State what you know of the circumstances attending the towing of the Mary E. Loughney, and the general state of the weather from the time you left on the trip mentioned hereinbefore from New York to New Haven. State, if you know, the cause of the occurrence of the sinking, and the source of your knowledge.

Tenth interrogatory. State what, if any, efforts were made to prevent the sinking of the said Mary E. Loughney, and by whom.
36 State if you saw such efforts made.

Eleventh interrogatory. If you shall have answered to the sixth interrogatory that the owner or captain or any person having the care of the boat were on board the Mary E. Loughney, state what you saw of their actions toward the Mary E. Loughney during and prior to the occurrence of the sinking.

Twelfth interrogatory. Subsequent to this alleged sinking of the Mary E. Loughney, did you have any conversations with her owner or captain respecting that occurrence? And, if yea, state what was said by both or either of you.

Thirteenth interrogatory. Do you know any other matter or thing touching the matters in question that may tend to the benefit or advantage of this defendant? If so, state the same fully and at large, as if you had been particularly interrogated thereto.

GEO. W. BIDDLE,
Per W., *Attorney for Defendant.*

Dec. 11, 1874.

37 Interrogatories to be administered to Chauncey A. Niles, of Middleport, Niagara Co., N. Y., a witness to be produced, sworn, and examined under and by virtue of the annexed commission, before W'm H. Willis, j'r, notary public, the commissioner therein named in a certain cause depending in the circuit court of the United States for the eastern district of Pennsylvania, wherein Patrick F. Hope is plaintiff and the Eastern Transportation Line is defendant, on the part of the said defendant:

First interrogatory. What is your name, age, and occupation, and where do you reside?

38 Second interrogatory. Do you know either of the parties to this action, the plaintiff or defendant? State which of them. State how long you have known these parties, or either of them.

Third interrogatory. What was your occupation or business from January 1st, 1873, to July 1st, 1873? How long have you been engaged in your present occupation?

Fourth interrogatory. Were you the owner of a barge called the , in the month of March, 1873? If yea, state whether you remember leaving New York City for New Haven, Connecticut, with your said barge on or about the 14th day of March, 1873, in the tow of a tow-boat of the defendant, the Eastern Transportation Line, and in company with a barge or vessel called the Mary E. Loughney.

Fifth interrogatory. State, if you know, who was in command of the said tow-boat, and what persons were aboard of her. Also state, if you know, who were on the Mary E. Loughney.

39 Sixth interrogatory. Do you remember the occurrence on that trip of the sinking of the barge Mary E. Loughney? If yea, state where it occurred, where you were at the time, and what you saw at and immediately prior to the time of the said occurrence.

Seventh interrogatory. State who were near you or in sight of you, and who witnessed the occurrence of the sinking, if any, besides you. State where were the captain, owner, or men belonging to the Mary E. Loughney, and where was the captain of the tow-boat immediately prior to the sinking. State if you saw any effort or exertions made by the captain or men of the tow-boat to save the Mary E. Loughney or to prevent her from sinking, and what they were, or by the owners or men of the barge itself.

Eighth interrogatory. State fully all that you saw of the said sinking of the Mary E. Loughney, and state what, to your knowledge, were the causes of the occurrence, and how you know them to be such causes.

Ninth interrogatory. Do you know any other matter or thing
40 touching the matter in question that may tend to the benefit or advantage of this defendant? If so, state the same fully and at large, as if you had been particularly interrogated thereto.

GEO. W. BIDDLE,
Per W., *Attorney for Def't.*

41 Interrogatories to be administered to Henry Wilson, of Jersey City, State of New Jersey, a witness to be produced, sworn, and examined under and by virtue of the annexed commission, before William H. Willis, j'r, notary public, the commissioner therein named, in a certain cause depending in the circuit court of the United States for the eastern district of Pennsylvania, wherein Patrick F. Hope is plaintiff, and the Eastern Transportation Line is defendant, on the part of the said defendant:

First interrogatory. What is your name, age, and occupation, and where do you reside?

Second interrogatory. Do you know either of the parties to this action, the plaintiff or the defendant? State which of them. State how long you have known these parties, or either of them, and which of them.

Third interrogatory. What was your occupation or business from January 1st, 1873, to July 1st, 1873?

Fourth interrogatory. Did you, on or about March 14th, 1873,
42 leave New York City on a tow-boat of the defendant, the Eastern Transportation Line, for New Haven, with a tow of barges or vessels? and, if so, state what, if any, was your employment on the tow-boats; and state, if you remember, what were the names of the barges and their owners, and how many barges there were.

Fifth interrogatory. State, if you know, who was in command of the said tow-boat, and what persons were aboard of her; also state, if you know, who were on the Mary E. Loughney.

Sixth interrogatory. Do you remember the occurrence on that trip of the sinking of the barge Mary E. Loughney? If yea, state when it occurred, where you were at the time, and what you saw at & immediately prior to the time of the said occurrence.

Seventh interrogatory. State who were near you or in sight of you, and who witnessed the occurrence of the sinking, if any, besides you.

43 State where were the captain, owner, or men belonging to the Mary E. Loughney, and where the captain of the tow-boat immediately prior to the sinking. State if you saw any efforts or exertions made by the captain or men of the tow-boat to save the Mary E. Loughney, or to prevent her from sinking, or by the owner or men of the barge itself, and what they were.

Eighth interrogatory. State fully all that you saw of the said sinking of the Mary E. Loughney, and state what to your knowledge were the causes of the occurrence, and how you know them to be such causes.

Ninth interrogatory. Do you know any other matter or thing touching the matter in question that may tend to the benefit or advantage of this defendant? If so, state the same fully and at large, as if you had been particularly interrogated thereto.

GEORGE W. BIDDLE,
Per W., *Attorney for Defendants.*

44 Interrogatories to be administered to Perry Burns, of Kingston, Ontario, a witness to be produced, sworn or affirmed, and examined under and by virtue of the annexed commission, before William H. Willis, junior, notary public, the commissioner therein named, in a certain cause depending in the circuit court of the United States for the eastern district of Pennsylvania, wherein Patrick F. Hope is plaintiff and The Eastern Transportation Line is defendant, on the part of the defendant:

First interrogatory. What is your name, age, and occupation, and where do you reside?

Second interrogatory. Do you know either of the parties to this action, the plaintiff or the defendant? State which of them. State how long you have known these parties, or either them, and which of them.

45 Third interrogatory. What was your occupation or business from January 1st to July 1st, 1873? How long have you been engaged in your present occupation?

Fourth interrogatory. Were you the owner of a barge called the Allen Monroe in the month of March, 1873? If yea, state whether you remember leaving New York City for New Haven with your said barge on or about the fourteenth day of March, 1873, in the tow of a tow-boat of the defendant, The Eastern Transportation Line, and in company with a barge or vessel called the Mary E. Loughney.

Fifth interrogatory. State, if you know, who was in command of the said tow-boat, and what persons were aboard of her; also, state, if you know, who were on the Mary E. Loughney.

Sixth interrogatory. Do you remember the occurrence on that trip of the sinking of the barge Mary E. Loughney? If yea, state where it occurred, where you were at the time, and what you saw at and immediately prior to the time of the said occurrence.

46 Seventh interrogatory. State who were near you or in sight of you, and who witnessed the occurrence of the sinking, if any beside you. State where were the captain, owner, or men belonging to the Mary E. Loughney, and where the captain of the tow-boat immediately prior to the sinking. State if you saw any efforts or exertions made by the captain or men of the tow-boat to save the Mary E. Loughney, or to prevent her from sinking, or by the owner or men of the barge itself.

Eighth interrogatory. State fully all that you saw of the said sinking of the Mary E. Loughney, and state what to your knowledge were the causes of the occurrence, and how you know them to be such causes.

Ninth interrogatory. Do you know any other matter or thing touching the matters in question that may tend to the benefit or advantage of this defendant? If so, state the same fully and at large, as if you had been particularly interrogated thereto.

GEO. W. BIDDLE,
Per W., *Attorney for Defendant.*

47 And afterwards, to wit, on the twenty-second day of December in the year eighteen hundred & seventy-four, the said plaintiff Patrick F. Hope, by J. Warren Coulston, esq., his attorney, came into our said court here and filed cross-interrogatories on behalf of the said plaintiff under the commission to New York, which, being read, are as follows, to wit:

In the circuit court of the United States for the eastern district of Pennsylvania.

PATRICK F. HOPE
v.
THE EASTERN TRANSPORTATION LINE. } Oct. sess., 1873. No. 36.

Cross-interrogatories by plaintiff to be addressed to Perry Burnes and Chauncey A. Niles, witnesses produced on the part of the defendant under a commission issued out of said court to the city of New York, State of New York, before William H. Willis, j'r.

1. How long have you been a barge captain? State also how
48 long you have followed the water, and in what positions.

2. When and where was the tow made up, and how were the three barges made fast to the tug-boat? Were all the barges loaded? Were the barges lashed alongside or towed astern of the tug singled out by a hawser?

3. When did you leave Cow Bay? Was the weather threatening when you left Cow Bay? Was there a storm of wind when you left Cow Bay? Was the wind high, and from what quarter was it blowing? Was there not a heavy sea on at the time you left Cow Bay to proceed on your voyage? Did the wind moderate or increase after you left Cow Bay? Did you not put into Cow Bay? If so, for what purpose, and how long did you stay there? State particularly the condition of the weather when you left Cow Bay.

4. How near the Long Island coast did the sinking of the
49 Mary E. Loughney occur? After leaving Cow Bay what course did the tug and tow take? Was the course near shore; if so, near which shore? State particularly the course taken from the time of leaving Cow Bay until the disaster.

5. State when and where the barges on the starboard side of the tug broke loose. What caused them to break loose? Was it not the heavy sea that caused the barges to break loose? What efforts were made by the tug and those in charge of her to recover the barge Mary Loughney?

6. Did you not say to the captain of the Mary Loughney, in a conversation on board the tug after the sinking, that you knew that he and his crew had done all that could be done to save his boat?

7. Do you not know that the tug, after the barges had broken loose,

struck the Mary Loughney violently on the port side, and towed the Allen Monroe in such a way that she struck the stern of the
50 Mary Loughney, breaking it in, and that this was one of the causes of the sinking?

8. Was not your boat, at or about the time of the disaster, let go from the port side of the tug and towed astern by a hawser? Was it before or after the barges on the starboard side had broken loose that the tug let your boat go from the lashings and began to tow your boat astern with a hawser?

9. Did not your barge sink a day or two after the sinking of the Mary Loughney? If so, was it not on account of injury received by her in striking the Mary Loughney while being towed at or about the time of the disaster? State particularly have you directly or indirectly made any settlement with the Eastern Transportation Line for injury to or loss of your boat. Have you sued the said line for injury to or loss of your boat? State particularly.

51 10. Do you know anything other than you have stated favorable to the plaintiff? If so, state the same fully, as if you had been particularly interrogated thereto.

J. WARREN COULSTON,
D.,
Att'y for Pl'ff.

52 Cross-interrogatories to be addressed to Henry Wilson, a witness produced on the part of the defendant in a certain action pending between Patrick F. Hope, plaintiff, and the Eastern Transportation Line, defendant, before William H. Willis, j'r.

1. How long and in what positions have you been employed on tugboats? In whose employment are you now?

2. At what time did you leave Cow Bay on the morning of the day on which the barge Mary Loughney was sunk? How was the weather when you left Cow Bay? How was the wind and how hard was it blowing? For what purpose did you go into Cow Bay, and how long did you stay there?

53 3. Was there not a heavy sea on as you proceeded on your voyage after leaving Cow Bay? Did the wind abate or increase after you left Cow Bay? Was there not a rough sea and bad weather when you left Cow Bay?

4. Was your tow nearer the Connecticut or the Long Island shore when the Mary Loughney sank? What course did the tug take after leaving Cow Bay? Did she follow the shore; and, if so, which shore?

5. State particularly how your tow was made up. Were the barges lashed alongside or towed astern singled out by a hawser? What lines and hawsers had you out from the tug to the barges, and from what part of the tug to what part of the barges?

J. WARREN COULSTON,
D.,
Att'y for Pl'ff.

54 Cross-interrogatories to be addressed to Robert Fletcher, a witness produced on the part of the defendant in a certain action pending in the circuit court of the United States for the eastern district of Pennsylvania, between Patrick F. Hope, plaintiff, and the Eastern Transportation Line, defendant, before William H. Willis, j'r:

1. How long have you followed the water? How long have you been a tow-boat captain? In whose employment are you now? Are

you acquainted with Long Island Sound, and how long have you been engaged in towing thereon?

2. Did you keep a log-book or memorandum-book of any kind on the trip from New York to New Haven on which the barge Mary
55 Loughney was sunk? If so, produce it, and send an exact copy of the entry made as to the disaster, and of all entries made from the beginning to the end of said trip upon which the sinking of said barge occurred. State when and by whom said entries was made. Have any additions or alterations been made in the log since it was first made?

3. Did you put into Cow Bay? If so, for what purpose, and how long did you remain there? How was the weather when you left Cow Bay? From what direction was the wind, and how hard was it blowing when you left Cow Bay? Did the wind increase or moderate as you proceeded on your trip? How far from Cow Bay were you when the Mary Loughney sank? How far from Huntingdon were you when the sinking occurred? How was the wind and the sea as you passed Huntingdon?

56 4. State at what speed your tug was going prior to the sinking of the Mary Loughney. How large is your tug, and what is the size of ther cylinders? How many men had you as crew, and is that her full complement?

5. Which shore did you follow, the Connecticut or the Long Island shore? How far were you from the Long Island shore when the Mary Loughney sank?

6. How was your tow made up? Who superintended the making up of the tow? Did you tow the barges lashed alongside or singled out astern by a hawser? State the number and strength of the lines and hawsers you had out from your tug to these barges, and from what part of your tug to what part of the barges.

J. WARREN COULSTON,
D.,
Att'y for Pl'ff.

57 In the circuit court of the United States for the eastern district of Pennsylvania, of October session, 1873.

PATRICK F. HOPE
vs.
THE EASTERN TRANSPORTATION LINE. } No. 36.

It is mutually agreed by the counsel for both plaintiff and defendants in the above case, that the name of "Adelbert Niles" be inserted as a witness in the commission issued to William H. Willis, j'r, esq., of New York, in place of "Chauncey A. Niles," wherever the name of said Chauncey A. Niles occurs, and that the interrogations and cross-interrogations annexed to said commission to be addressed to said Chauncey A. Niles by the commissioner shall be by him propounded to said Adelbert Niles.

J. WARREN COULSTON,
Att'y for Pl'ff.
GEO. W. BIDDLE,
Att'y for Defendant.

JANUARY 21ST 1875.

58 And afterwards, to wit, on the eighteenth day of February, in the year eighteen hundred and seventy-five the said commission

directed to William H. Willis, j'r, esq., of the city of New York, in the State of New York, being returned duly opened in open court, and filed, is as follows:

59 In the circuit court of the United States in and for the eastern district of Pennsylvania, in the third circuit, of October session, 1873.

PATRICK F. HOPE
vs.
THE EASTERN TRANSPORTATION LINE. } No. 36.

The President of the United States to William H. Willis, j'r, of the city of New York, in the State of New York:

Know ye that, in confidence of your prudence and integrity, we have given unto you, and by these presents do give unto you, William H. Willis, j'r, full power and authority, in pursuance of a rule lately made in the circuit court of the United States in and for the eastern district of Pennsylvania, in the third circuit, in a certain action on the case therein depending, wherein the said Patrick F. Hope is plaintiff and the Eastern Transportation Line is defendant, to call before you, at a certain day and place, by you for that purpose to be appointed, all and every person and persons who may be named to you by the said defendant as witnesses in the said action, and then and there to examine them, on their respective oath or affirmation, on certain interrogatories hereunto annexed, touching the premises, and to reduce their testimony to writing; and when you shall have so done, you are to send the same to the said circuit court, closed up and under your seals, plainly and distinctly set, together with this writ.

Witness the honorable Morrison R. Waite, Chief-Justice of the Supreme Court of the United States, at Philadelphia, this 28th day of December, A. D. 1874, and in the 99th year of the Independence of the said United States.

SAMUEL L. BELL,
Clerk of Circuit Court.

60 The execution of this commission appears in a certain schedule hereunto annexed.

W. H. WILLIS, J'R.
Notary Public in & for City & Co. of N. Y.

61 In the circuit court of the United States for the eastern district of Pennsylvania, of October sessions, 1873.

PATRICK F. HOPE
vs.
THE EASTERN TRANSPORTATION LINE. } No. 36.

Enter a rule on the plaintiff in the above case for a commission to be issued to William H. Willis, j'r, of the city of New York, in the State of New York, to take the testimony of witnesses on the annexed interrogatories, to be read on the trial of the case.

GEORGE W. BIDDLE.

DEC. 11*th*, 1874.
To Col. SAMUEL BELL, *Clerk of said Court.*

In the circuit court of the United States for the eastern district of Pennsylvania, of October sessions, 1873.

PATRICK F. HOPE
vs.
THE EASTERN TRANSPORTATION LINE. } No. 36.

Interrogatories to be administered to Robert Fletcher, of Jersey City, in the State of New Jersey, a witness to be produced, sworn, and examined under and by virtue of the annexed commission, before
62 William H. Willis, j'r, notary public, the commissioner therein named, in a certain cause depending in the circuit court of the United States for the eastern district of Pennsylvania, wherein Patrick F. Hope is plaintiff and the Eastern Transportation Line is defendant, on the part of the said defendant.

First interrogatory. What is your name, age, and occupation, and where do you reside?

Second interrogatory. Do you know either of the parties to this action, the plaintiff or the defendant? State which of them; state how long you have known these parties, or either of them, and which of them.

Third interrogatory. What was your occupation and in whose employ were you from January 1st to July 1st, 1873? How long have you been engaged in your present occupation?

Fourth interrogatory. Were you, as captain of one of the tow-boats of the defendant, directed by defendant to tow a certain barge or vessel called the Mary E. Loughney from New York City to New Haven, Connecticut, in or about the month of March, 1873? If so, state your recollection of the date of departure with that tow and the number and names of barges you had in tow besides the said Mary E. Loughney, and the names of their owners or captains.

Fifth interrogatory. If you shall have answered that you were captain of a tow-boat in March, 1873, and did on or about March 14th, 1873, have in tow, among others, a barge or vessel called
63 the Mary E. Loughney, state if you remember the alleged sinking of the said barge. If yea, did you witness the sinking, and at what place or point did it occur? Where were you at the time of the sinking? Who others, if any, were present at the time and witnessed the occurrence, and where were they?

Sixth interrogatory. Did the owner, or any person representing him, go with the Mary E. Loughney when she started in your tow from New York City on this trip? If so, then state who was on board of her?

Seventh interrogatory. If you shall have answered to the fifth interrogatory that you remember the occurrence of the alleged sinking of the Mary E. Loughney and witnessed the same, state all that you saw of the alleged sinking immediately prior to and during the occurrence of the same.

Eighth interrogatory. State if you have had much experience in the management of canal boats or barges. State if you are perfectly familiar with the management, construction, and equipment of canal boats or barges. If you shall answer yea to the preceding question, state if you know what was the condition of the barge or vessel Mary E. Loughney at the time of leaving New York City in your tow on the trip referred to herein, in so far as respects her sea-worthiness, staunchness, and the condition of her tackle, apparel, and furniture, and what was the source of your knowledge.

Ninth interrogatory. State what you know of the circumstances attending the towing of the Mary E. Loughney and the general state of the weather from the time you left on the trip mentioned hereinbefore from New York to New Haven. State if you know the cause of the occurrence of the sinking and the sources of your knowledge.

64 Tenth interrogatory. State what, if any, efforts were made to prevent the sinking of the said Mary E. Loughney, and by whom. State if you saw such efforts made.

Eleventh interrogatory. If you shall have answered to the sixth interrogatory that the owner, or captain, or any person having the care of the boat were on board the Mary E. Loughney, state what you saw of their actions towards the Mary E. Loughney during and prior to the occurrence of the sinking.

Twelfth interrogatory. Subsequent to this alleged sinking of the Mary E. Loughney, did you have any conversations with her owner or captain respecting that occurrence? And, if yea, state what was said by both or either of you.

Thirteenth interrogatory. Do you know any other matter or thing touching the matters in question that may tend to the benefit or advantage of this defendant? If so, state the same fully and at large, as if you had been particularly interrogated thereto.

GEO. W. BIDDLE,
Per T. F.,
Attorney for Defendant.

DEC. 11, 1874.

Interrogatories to be administered to Chauncy A. Niles, of Middle port, Niagara Co., N. Y., a witness to be produced, sworn, and examined under and by virtue of the annexed commission, before W'm H. Willis, j'r, notary public, the commissioner therein named, in a certain cause depending in the circuit court of the United States for the eastern district of Pennsylvania, wherein Patrick F. Hope is plaintiff and the Eastern Transportation Line is defendant,

65 on the part of the said defendant.

First interrogatory. What is your name, age, and occupation, and where do you reside?

Second interrogatory. Do you know either of the parties to this action, the plaintiff or defendant? State which of them. State how long you have known these parties, or either of them.

Third interrogatory. What was your occupation or business from January 1st, 1873, to July 1st, 1873? How long have you been engaged in your present occupation?

Fourth interrogatory. Were you the owner of a barge called the , in the month of March, 1873? If yea, state whether you remember leaving New York City for New Haven, Connecticut, with your said barge, on or about the 14th day of March, 1873, in the tow of a tow-boat of the defendant, the Eastern Transportation Line, and in company with a barge or vessel called the Mary E. Loughney.

Fifth interrogatory. State if you know who was in command of the said tow-boat and what persons were aboard of her; also state, if you know, who was on the Mary E. Loughney.

Sixth interrogatory. Do you remember the occurrence on that trip of the sinking of the barge Mary E. Loughney? If yea, state where it occurred; where you were at the time; and what you saw at and immediately prior to the time of the said occurrence.

Seventh interrogatory. State who was near you or in sight of you, and

who witnessed the occurrence of the sinking, if any, besides you. State where were the captian, owner, or men belonging *of* the Mary E.
66 Loughney, and where was the captain of the tow-boat immediately prior to the sinking. State if you saw any efforts or exertions made by the captain or men of the tow-boat to save the Mary E. Loughney or to prevent her from sinking, and what they were, or by the owners or men of the barge itself.

Eighth interrogatory. State fully all that you saw of the said sinking of the Mary E. Loughney, and state what, to your knowledge, were the causes of the occurrence, and how you know them to be such causes.

Ninth interrogatory. Do you know any other matter or thing touching the matters in question that may tend to the benefit or advantage of this defendant? If so, state the same fully and at large, as if you had been particularly interrogated thereto.

GEO. W. BIDDLE,
Per H.,
Attorney for Def't.

67 Interrogatories to be administered to Henry Wilson, of Jersey City, State of New Jersey, a witness to be produced, sworn, and examined under and by virtue of the annexed commission, before William H. Willis, j'r, notary public, the commissioner therein named, in a certain cause depending in the circuit court of the United States for the eastern district of Pennsylvania, wherein Patrick F. Hope is plaintiff and the Eastern Transportation Line is defendant, on the part of the said defendant:

First interrogatory. What is your name, age, and occupation, and where do you reside?

Second interrogatory. Do you know either of the parties to this action, the plaintiff or the defendant? State which of them. State how long you have know' these parties, or either of them, and which of them.

Third interrogatory. What was your occupation or business from January 1st, 1873, to July 1st, 1873? How long have you been engaged in your present occupation?

Fourth interrogatory. Did you, on or about March 14th, 1873, leave New York City on a tow-boat of the defendant, the Eastern Transportation Line, for New Haven, with a tow of barges or vessels? And, if so, state what, if any, was your employment on the tow-boats; and state, if you remember, what were the names of the barges and their
68 owners, and how many barges there were.

Fifth interrogatory. State, if you know, who was in command of the said tow-boat, and what persons were aboard of her; also state, if you know, who were on the Mary E. Loughney.

Sixth interrogatory. Do you remember the occurrence on that trip of the sinking of the barge Mary E. Loughney? If yea, state where it occurred, where you were at the time, and what you saw at and immediately prior to the time of the said occurrence.

Seventh interrogatory. State who were near you or in sight of you, and who witnessed the occurrence of the sinking, if any, besides you. State where were the captain, owner, or men belonging to the Mary E. Loughney, and where the captain of the tow-boat immediately prior to the sinking. State if you saw any efforts or exertions made by the captain or men of the tow-boat to save the Mary E. Loughney or to prevent her from sinking, or by the owner or men of the barge itself, and what they were.

Eight' interrogatory. State fully all that you saw of the said sinking

Ninth interrogatory. State what you know of the circumstances attending the towing of the Mary E. Loughney and the general state of the weather from the time you left on the trip mentioned hereinbefore from New York to New Haven. State if you know the cause of the occurrence of the sinking and the sources of your knowledge.

64 Tenth interrogatory. State what, if any, efforts were made to prevent the sinking of the said Mary E. Loughney, and by whom. State if you saw such efforts made.

Eleventh interrogatory. If you shall have answered to the sixth interrogatory that the owner, or captain, or any person having the care of the boat were on board the Mary E. Loughney, state what you saw of their actions towards the Mary E. Loughney during and prior to the occurrence of the sinking.

Twelfth interrogatory. Subsequent to this alleged sinking of the Mary E. Loughney, did you have any conversations with her owner or captain respecting that occurrence? And, if yea, state what was said by both or either of you.

Thirteenth interrogatory. Do you know any other matter or thing touching the matters in question that may tend to the benefit or advantage of this defendant? If so, state the same fully and at large, as if you had been particularly interrogated thereto.

GEO. W. BIDDLE,
Per T. F.,
Attorney for Defendant.

DEC. 11, 1874.

Interrogatories to be administered to Chauncy A. Niles, of Middleport, Niagara Co., N. Y., a witness to be produced, sworn, and examined under and by virtue of the annexed commission, before W'm H. Willis, j'r, notary public, the commissioner therein named, in a certain cause depending in the circuit court of the United States for the eastern district of Pennsylvania, wherein Patrick F. Hope is plaintiff and the Eastern Transportation Line is defendant,

65 on the part of the said defendant.

First interrogatory. What is your name, age, and occupation, and where do you reside?

Second interrogatory. Do you know either of the parties to this action, the plaintiff or defendant? State which of them. State how long you have known these parties, or either of them.

Third interrogatory. What was your occupation or business from January 1st, 1873, to July 1st, 1873? How long have you been engaged in your present occupation?

Fourth interrogatory. Were you the owner of a barge called the , in the month of March, 1873? If yea, state whether you remember leaving New York City for New Haven, Connecticut, with your said barge, on or about the 14th day of March, 1873, in the tow of a tow-boat of the defendant, the Eastern Transportation Line, and in company with a barge or vessel called the Mary E. Loughney.

Fifth interrogatory. State if you know who was in command of the said tow-boat and what persons were aboard of her; also state, if you know, who was on the Mary E. Loughney.

Sixth interrogatory. Do you remember the occurrence on that trip of the sinking of the barge Mary E. Loughney? If yea, state where it occurred; where you were at the time; and what you saw at and immediately prior to the time of the said occurrence.

Seventh interrogatory. State who was near you or in sight of you, and

who witnessed the occurrence of the sinking, if any, besides you. State where were the captian, owner, or men belonging *of* the Mary E.
66 Loughney, and where was the captain of the tow-boat immediately prior to the sinking. State if you saw any efforts or exertions made by the captain or men of the tow-boat to save the Mary E. Loughney or to prevent her from sinking, and what they were, or by the owners or men of the barge itself.

Eighth interrogatory. State fully all that you saw of the said sinking of the Mary E. Loughney, and state what, to your knowledge, were the causes of the occurrence, and how you know them to be such causes.

Ninth interrogatory. Do you know any other matter or thing touching the matters in question that may tend to the benefit or advantage of this defendant? If so, state the same fully and at large, as if you had been particularly interrogated thereto.

GEO. W. BIDDLE,
Per H.,
Attorney for Def't.

67 Interrogatories to be administered to Henry Wilson, of Jersey City, State of New Jersey, a witness to be produced, sworn, and examined under and by virtue of the annexed commission, before William H. Willis, j'r, notary public, the commissioner therein named, in a certain cause depending in the circuit court of the United States for the eastern district of Pennsylvania, wherein Patrick F. Hope is plaintiff and the Eastern Transportation Line is defendant, on the part of the said defendant:

First interrogatory. What is your name, age, and occupation, and where do you reside?

Second interrogatory. Do you know either of the parties to this action, the plaintiff or the defendant? State which of them. State how long you have know' these parties, or either of them, and which of them.

Third interrogatory. What was your occupation or business from January 1st, 1873, to July 1st, 1873? How long have you been engaged in your present occupation?

Fourth interrogatory. Did you, on or about March 14th, 1873, leave New York City on a tow-boat of the defendant, the Eastern Transportation Line, for New Haven, with a tow of barges or vessels? And, if so, state what, if any, was your employment on the tow-boats; and state, if you remember, what were the names of the barges and their
68 owners, and how many barges there were.

Fifth interrogatory. State, if you know, who was in command of the said tow-boat, and what persons were aboard of her; also state, if you know, who were on the Mary E. Loughney.

Sixth interrogatory. Do you remember the occurrence on that trip of the sinking of the barge Mary E. Loughney? If yea, state where it occurred, where you were at the time, and what you saw at and immediately prior to the time of the said occurrence.

Seventh interrogatory. State who were near you or in sight of you, and who witnessed the occurrence of the sinking, if any, besides you. State where were the captain, owner, or men belonging to the Mary E. Loughney, and where the captain of the tow-boat immediately prior to the sinking. State if you saw any efforts or exertions made by the captain or men of the tow-boat to save the Mary E. Loughney or to prevent her from sinking, or by the owner or men of the barge itself, and what they were.

Eight' interrogatory. State fully all that you saw of the said sinking

of the Mary E. Loughney, and state what, to your knowledge, were the causes of the occurrence, and how you know them to be such causes.

Ninth interrogatory. Do you know any other matter or thing touching the matters in question that may tend to the benefit or advantage
69 of this defendant? If so, state the same fully and at large, as if you had been particularly interrogated thereto.

GEO. W. BIDDLE,
Attorney for Defendant.

Interrogatories to be administered to Perry Burns, of Kingston, Ontario, a witness to be produced, sworn, or affirmed, and examined under and by virtue of the annexed commission, before William H. Willis, junior, notary public, the commissioner therein named, in a certain cause depending in the circuit court of the United States for the eastern district of Pennsylvania, wherein Patrick F. Hope is plaintiff and the Eastern Transportation Line is defendant, on the part of the defendant:

First interrogatory. What is your name, age, and occupation, and where do you reside?

Second interrogatory. Do you know either of the parties to this action, the plaintiff or the defendant? State which of them; state how long you have known these parties, or either of them, and which of them.

Third interrogatory. What was your occupation or business from January 1st to July 1st, 1873? How long have you been engaged in your present occupation?

Fourth interrogatory. Were you the owner of a barge called the Allen Monroe, in the month of March, 1873? If yea, state whether
70 you remember leaving New York City for New Haven with your said barge on or about the fourteenth day of March, 1873, in the tow of a tow-boat of the defendant, the Eastern Transportation Line, and in company with a barge or vessel called the Mary E. Loughney.

Fifth interrogatory. State, if you know, who was in command of the said tow-boat, and what persons were aboard of her; also state, if you know, who were on the Mary E. Loughney.

Sixth interrogatory. Do you remember the occurrence on that trip of the sinking of the barge Mary E. Loughney? If yea, state where it occurred, where you were at the time, and what you saw at and immediately prior to the time of the said occurrence.

Seventh interrogatory. State who were near you or in sight of you, and who witnessed the occurrence of the sinking, if any, besides you. State where were the captain, owner, or men belonging to the Mary E. Loughney, and where the captain of the tow-boat immediately prior to the sinking. State if you saw any efforts or exertions made by the captain or men of the tow-boat to save the Mary E. Loughney, or to prevent her from sinking, or by the owner or men of the barge itself.

Eighth interrogatory. State fully all that you saw of the said sinking of the Mary E. Loughney, and state what, to your knowledge, were the causes of the occurrence, and how you know them to be such causes.

71 Ninth interrogatory. Do you know any other matter or thing touching the matters in question that may tend to the benefit or advantage of this defendant? If so, state the same fully and at large, as if you had been particularly interrogated thereto.

GEO. W. BIDDLE,
Attorney for Defendants.

72 In the circuit court of the United States for the eastern district of Pennsylvania.

PATRICK F. HOPE
vs.
THE EASTERN TRANSPORTATION LINE. } Oct. sus., 1873. No. 36.

Cross-interrogatories by the plaintiff to be addressed to Perry Burns and Chauncey A. Niles, witnesses produced on the part of the defendant, under a commission issued out of said court to the city of New York, State of New York, before William H. Willis, j'r:

1. How long have you been a barge captain? State also how long you have followed the water, and in what positions.

2. When and where was the tow made up, and how were the three barges made fast to the tug-boat? Were all the barges loaded? Were the barges lashed alongside or towed astern of the tug, singled out by a hawser?

3. When did you leave Cow Bay? Was the weather threatening when you left Cow Bay? Was there a storm of wind when you left Cow Bay? Was the wind high, and from what quarter was it blowing? Was there not a heavy sea on at the time you left Cow Bay to proceed on your voyage? Did the wind moderate or increase after you
73 left Cow Bay? Did you not put into Cow Bay? If so, for what purpose, and how long did you stay there? State particularly the condition of the weather when you left Cow Bay.

4. How near the Long Island coast did the sinking of the Mary E. Loughney occur? After leaving Cow Bay what course did the tug and tow take? Was the course near shore; if so, near which shore? State particularly the course taken from the time of leaving Cow Bay until the disaster.

5. State when and where the barges on the starboard side of the tug broke loose. What caused them to break loose? Was it not the heavy sea that caused the barges to break loose? What efforts were made by the tug and those in charge of her to recover the barge Mary Loughney?

6. Did you not say to the captain of the Mary Loughney, in a conversation on board the tug after the sinking, that you knew that he and his crew had done all that could be done to save his boat?

7. Do you not know that the tug, after the barges had broken loose, struck the Mary Loughney violently on the port side and towed the Allen Monroe in such a way that she struck the stern of the Mary
74 Loughney, breaking it in, and that this was one of the causes of the sinking?

8. Was not your boat, at or about the time of the disaster, let go from the port side of the tug and towed astern by a hawser? Was it before or after the barges on the starboard side had broken loose that the tug let your boat go from the lashings and began to tow your boat astern with a hawser?

9. Did not your barge sink a day or two after the sinking of the Mary Loughney? If so, was it not on account of injury received by her in striking the Mary Loughney while being towed at or about the time of the disaster? State particularly, have you directly or indirectly made any settlement with the Eastern Transportation Line for injury to or loss of your boat? Have you sued the said line for injury to or loss of your boat? State particularly.

10. Do you know anything other than you have stated favorable to the plaintiff? If so, state the same fully, as if you had been particularly interrogated thereto.

J. WARREN COULSTON,
Att'y for Pl'ff.

75 Cross-interrogatories to be addressed to Henry Wilson, a witness produced on the part of the defendant in a certain action pending between Patrick F. Hope, plaintiff, and the Eastern Transportation Line, defendant, before William H. Willis, j'r:

1. How long and in what positions have you been employed on tugboats? In whose employment are you now?

2. At what time did you leave Cow Bay on the morning of the day on which the barge Mary Loughney was sunk? How was the weather when you left Cow Bay? How was the wind, and how hard was it blowing? For what purpose did you go into Cow Bay and how long did you stay there?

3. Was there not a heavy sea on as you proceeded on your voyage after leaving Cow Bay? Did the wind abate or increase after you left Cow Bay? Was there not a rough sea and bad weather when you left Cow Bay?

4. Was your tow nearer the Connecticut or the Long Island shore when the Mary Loughney sank? What course did the tug take
76 after leaving Cow Bay? Did she follow the shore; and, if so, which shore?

5. State particularly how your tow was made up? Were the barges lashed alongside or towed astern, singled out by a hawser? What lines and hawsers had you out from the tug to the barges, and from what part of the tug to what part of the barges?

J. WARREN COULSTON,
Att'y for Pl'ff.

Cross-interrogatories to be addressed to Robert Fletcher, a witness produced on the part of the defendant in a certain action pending in the circuit court of the United States for the eastern district of Pennsylvania, between Patrick F. Hope, plaintiff, and the Eastern Transportation Line, defendant, before William H. Willis, j'r:

1. How long have you followed the water? How long have you been a tow-boat captain? In whose employment are you now? Are you acquainted with Long Island Sound, and how long have you been engaged in towing thereon?

77 2. Did you keep a log-book or memorandum-book of any kind on the trip from New York to New Haven on which the barge Mary Loughney was sunk? If so, produce it and send an exact copy of the entry made as to the disaster, and of all entries made from the beginning to the end of said trip upon which the sinking of said barge occurred. State when and by whom said entries were made. Have any additions or alterations been made in the log since it was first made?

3. Did you put into Cow Bay? If so, for what purpose, and how long did you remain there? How was the weather when you left Cow Bay? From what direction was the wind and how hard was it blowing when you left Cow Bay? Did the wind increase or moderate as you proceeded on your trip? How far from Cow Bay were you when the Mary Loughney sank? How far from Huntingdon were you when the

sinking occurred? How was the wind and the sea as you passed Huntingdon?

78 4. State at what speed your tug was going prior to the sinking of the Mary Loughney. How large is your tug, and what is the size of her cylinders? How many men had you as crew, and is that her full complement?

5. Which shore did you follow, the Connecticut or the Long Island shore? How far were you from the Long Island shore when the Mary Loughney sank?

6. How was your tow made up? Who superintended the making up of the tow? Did you tow the barges lashed alongside or singled out astern by a hawser? State the number and strength of the lines and hawsers you had out from your tug to these barges, and from what part of your tug to what part of the barges.

J. WARREN COULSTON,
Att'y for Pl'ff.

True copy from the record.

SAMUEL BELL,
Clerk Cir C't U. S., E. D. of P'a.

79 Depositions of witnesses produced, sworn, and examined on the 28th day of January, in the year of our Lord one thousend eight hundred and seventy-five, at the office of Gray and Devenport, 11 Pine street, in the city of New York, in and by virtue of a commission issuing from the circuit court of the United States for the eastern district of Pennsylvania, to William H. Willis, j'r, directed for the examination of witnesses in a certain cause depending in said court, wherein Patrick F. Hope is plaintiff and the Eastern Transportation Line is dependant:

Henry Wilson, of Jersey City, aged thirty years, or thereabouts, being produced, sworn, and examined on behalf of defendant, deposeth as follows:

To the first interrogatory on the part of the defendant, answers as follows:

1. Henry Wilson; thirty years of age; engineer; I reside in Jersey City.

To the second interrogatory on the part of the defendant, answers as follows:

2. I know the defendants and its officers, not the plaintiff. I known the defendants two years and a half.

To the third interrogatory on the part of the defendants, answers as follows:

3. I have been an engineer twelve years.

To the fourth interrogatory on the part of the defendants, answers as follows:

80 4. We left either the 14th or 15th, I am not sure which, on one of defendants' tow-boats, the Game Cock. I was engineer on that boat. I do not remember the names of the barges. I remember that Captain Perry Burns was the owner of one. I remember there were three barges.

To the fifth interrogatory on the part of the defendants, answers as follows:

5. Robert Fletcher was in command of the tow-boats; on board of the tow-boats were Captain Fletcher, the mate, Arthur, the deck hand and as steward, an engineer, (myself,) and two firemen; the captain and one man; I mean the captain who pretended to own the boat lost.

To the sixth interrogatory on the part of the defendants, answers as follows:

6. I remember the sinking of the Mary E. Loughney on that trip off Huntingdon or Eagle Neck. I was in the engine-room at the time. I saw the boats breaking loose just before the sinking. I saw the captain of the boat was lost jump aboard of the Game Cock; than I saw Capt. Fletcher drop the barges astern with a hawser; then the hawser was parted again; I think it was cut by an iron on the barge's bow. I then saw Capt. Fletcher lower a small boat and go aboard the barges that had broken loose. I think there were two broken loose.

81 I then saw Capt. Fletcher go aboard the boat that was first lost, and he put down the hatches. It was the Mary E. Loughney that was lost first, and the Allen Monroe second. I saw him round the pumps on the Loughney. I saw the two boats that broke adrift come together; I think they were the two that were sunk, but not at the same time; shortly after I saw one of them sink. It was the one the Capt. Fletcher went aboard of. Then we took the two remaining boats to a hawser and took them into Huntington Bay.

To the seventh interrogatory on the part of the defendant, answers as follows:

7. No one that I know of, except the crew of the boats; I mean the barges and the tug-boat. The whole company were out on the decks. The capt. and deck-hand of the Mary E. Loughney were on board of the tug-boat immediately prior to the sinking. The capt. of the tug-boat, just before the sinking, was in his small boat coming to the tow-boat or on the tow-boat. He left the Loughney just before she went down. Capt. Fletcher drop'ed the Loughney astern to a hawser, and, as I said before, he put the hatches down and tried the pumps. I did not see the capt'n or men of the Loughney make any exertion to prevent her from sinking.

82 To the eighth interrogatory on the part of the defendants, answers as follows:

8. I think I have told all that I saw of the sinking of the Loughney. Rough weather and wind were the causes of the occurrence.

To the ninth interrogatory on the part of the defendant, answers as follows:

9. I know nothing more concerning the matter in question then the facts I have already stated.

To the first cross-interrogatory on the part of the plaintiff, answers as follows:

1. I have been employed on tug-boats off and on about five years, always as engineer. I am now in the employment of Morris & Cummings, of New York.

To the second cross-interrogatory on the part of the plaintiff, answers as follows:

2. I think we left Cow Bay about 5 o'clock in the morning of the day on which the Mary Loughney was sunk. There was no wind of any account to my recollection when we left Cow Bay. In the morning the sun rose bright, and the weather was clear, as far as I know. We went into Cow Bay because the weather looked bad. Don't recollect how long we stayed there.

To the third cross-interrogatory on the part of the plaintiff, answers as follows:

83 3. I do not recollect of any heavy sea on or after leaving Cow Bay. Between 8 and 9 o'clock I think the wind began to blow. There was no rough sea nor bad weather when we left Cow Bay.

To the fourth cross-interrogatory on the part of plaintiff, answers as follows:

4. Our tow was nearer the Long Island shore when the Mary Loughney sank. The tug followed the Long Island shore after leaving Cow Bay. After the boat sunk she made for Huntington Harbor.

To the fifth cross-interrogatory on the part of plaintiff, answers as follows:

5. We had two boats on the starboard side of the tug and one on the port side when the tow was made up; this composed the whole tow. The Mary E. Loughney was the inside boat on the starboard side; she was fastened to the tug by a spring-line, a bow-line and a stern-line. The spring-line ran from the bow of the tow-boat to a cleat on the canal-boat pretty well aft. The bow-line ran from the bow of the canal-boat to the bow of the tug. The stern-line ran from the stern of the canal-boat to the stern of the tug. The boat on the port side of the tug was lashed in the same manner as the Mary E. Loughney. I do not know how the boat outside of the Mary E. Loughney was fastened. I
84 know nothing about the age or condition of the lines. I did not see any lines running from the barge outside of the tug.

[SEAL.] HENRY WILSON.

W. H. WILLIS, J'R,
Notary Public N. Y. City & county.

Subscribed & sworn to before me this 28th day of January, 1875.
W'M H. WILLIS, J'R,
Notary Public in and for city & county of New York.

85 Perry Burns, of the city of Buffalo, New York, age thirty-one years, or thereabouts, being produced, sworn, and examined on behalf of defendant, deposeth as follows:

To the first interrogatory on the part of the defendant, answers as follows:

1. My occupation is boatman; my name is Perry Burns; my age 31 years; I reside in the city of Buffalo.

To the second interrogatory on the part of the defendant, answers as follows:

2. I know the Eastern Transportation Line; I don't know the plaintiff; I have known some of the officers of the defendant for 3 or 4 years.

To the third interrogatory on the part of the defendant, answers as follows:

3. My occupation from January 1st, 1873, to July 1st, 1873, was boatman; I have never had any other occupation; I have been in my present occupation about 16 years.

To the fourth interrogatory on the part of the defendant, answers as follows:

4. I was the owner of the barge Allen Monroe in March, 1873. I recollect leaving New York City for Norwich, Conn., with my barge,
86 I think it was the 15th March, 1873. I was not going to New Haven, but we went by the way of New Haven. My barge was in the tow of a tug-boat of the def't called the Game Cock. When I say "we," I mean myself and my barge. I remember that we were in company with a barge called the Mary Loughney.

To the fifth interrogatory on the part of the defendant, answers as follows:

5. Captain Fletcher was the commander of the tow-boat; Henry Wil-

son was engineer, and a man called Arthur was mate. There was a steward called Bob. There was one deck-hand and two firemen. On board the Loughney was a man who claimed to own her, and one other man.

To the sixth interrogatory on the part of defendant, answers as follows:

6. I remember on that trip the sinking of the barge Loughney. The sinking occurred between Cow Bay and Huntington. At the time it occurred I was on my boat on the deck. Just before the sinking Capt. Fletcher hollowed out to everybody. I think it was more to me that he spoke, because I was right near; the window of the pilot-house was open and I was talking to him about it at time. He said he would go to
87 Huntington and he would have to drop the boat back if the weather got worse. He pointed to a light-house, and said that Huntington was on the other side of the light-house. I went down then to eat my breakfast, and I heard then shouting out the boats were broke loose. The spring-line from the Loughney to the tug had given away at that time. I saw Capt. Fletcher on top of the engine-house order lines to be cast out to the boats dropped back. Capt. Fletcher stopped the steamboat. They passed a line on to the Loughney, a long new hawser. I in the mean time got a line on my boat for the purpose of dropping her back, and made it fast around the bits and passed it back to the middle cleat in case the bits should give way. I opened some of my lines and those that were fastened I chopped them off with an axe. Then the 3 boats dropped back, and when they were back I saw there was no one on board the Loughney, and there was only one man on board the other boat, the F. B. Freeman. The two boats on the starboard side dropped back together, and they had a bow-line fastened from the bow of the one to the bow of the other, and from the stern of the one to the stern of the other; that was when they were dropping back. When the steamboat went ahead and brought up on the spring-line,
88 pulling one boat ahead of the other, the hawser slipped off the cleat on the bow of the Loughney. Then I saw that the bow-line and the stern-line connecting the two barges were off, but the spring-line held together yet; it was a new spring-line; it connected the two barges. It was made fast to the bow-cleat of the Loughney, and ran back to the middle cleat of the Freeman. Those two barges were jumping considerably, and the spring-line fetched up sharply and brought the bow of the Loughney against the Freeman's side. The two barges pounded together considerably, the bow of the Loughney caught in the side of the Freeman and raised her timbers apart. I hollowed to Niles' son, who was on board the Freeman, to cast off the spring-line so as to keep the boats apart. When the two barges were drifting back I saw Capt. Fletcher get in a small boat with a man, taking the end of a hawser with him. He took it and got on the Loughney and made it fast to the bow of the Loughney. He sounded the water and put on the hatches, and then he hollowed to the steamboat to go ahead. When the steamboat went ahead to pull the Loughney the hawser got across the stern of the Freeman. The two barges had swung a little around and the steamboat was then a little off to the right, and the hawser was cut by the stern of the
89 Freeman. I think the Loughney sank before they could get another hawser on to her. The capt's little boat was along side of the Loughney at the time. The capt. then left the Loughney just before she sank and went on the tug-boat and passed the hawser on the Freeman. I hollowed to the capt. when he was on the

Loughney that she was sinking and he had better leave her. After the sinking we went right on to Huntington with the Freeman and Monroe.

To the seventh interrogatory on the part of defendant, answers as follows:

7. All hands of the steamboat and the barge were out, so I could see them. I think all the hands were out all time of the sinking. I think the engineer was in the door of the engine-room.

The captain and man of the Loughney were on the tug-boat first before the Loughney sank. The captain of the tug was on the Loughney first before she sank; he left her first before her deck was at the waters' edge. I saw the captain and the men of the tug making exertions to save the Loughney and to prevent her from sinking, in the manner I have stated already. I did not see the captain nor his man (of the Loughney) make any exertions to save her or to prevent her from sinking.

90 To the eighth interrogatory on the part of the defendant, answers as follows:

8. I have stated before in my answers to the 6th interrogatory all that I saw of the sinking of the Loughney; as to the cause of the sinking, I know that the weather was very rough, but if anybody had been aboard of the Loughney to throw off the spring-line, that would have prevented the pounding together of the Loughney and Freeman. When the barges swung around, the Loughney got into the trough of the sea, the water washed over her, her hatches were kind of light, made of thin stuff, as they usually are on those Schuy'kill boats, and the water went in between the hatches and the hatch combing, and between the water that entered for in that way and the pounding against the Freeman she filled and sank.

To the ninth interrogatory on the part of the defendant, answers as follows:

9. I saw the captain and hand of the Loughney jump off from the Loughney to the tug as the former slid back; they jumped on to the stern of the tug, which I could plainly see from the top of my cabin where I was.

91 To the first cross-interrogatory on the part of the plaintiff, answers as follows:

1. Have been a barge-captain about 8 years. I have followed the water from a driver to a captain about 15 or 16 years.

To the second cross-interrogatory on the part of the plaintiff, answers as follows:

2. The tow was made up in Jersey City, I think, on March 15th, 1873. My barge was fastened to the tug by a bow-line, spring-line, backing-line, and two stern-lines, one from the inside and one from the outside quarter. I do not know how the Loughney was fastened; the Freeman was fastened to the Loughney by a bow-line, spring-line, and a stern-line. The barges was loaded. My barge was loaded alongside or port side; the other two on the starboard side.

To the third interrogatory on the part of the plaintiff, answers as follows:

3. We left Cow Bay Sunday morning, March 16th, very early in the morning. The weather at that time was very calm; there was no wind; if there had been I would have cut loose from the tug; I would not have gone out. There was not a heavy sea at that time. The

92 wind increased after leaving Cow Bay. We went into Cow Bay the evening of the 15th inst. because weather looked bad. At

the time we left Cow Bay it was to' early in the morning, I think, to see the sun. There was very slight fog.

To the fourth cross-interrogatory on the part of plaintiff, answers as follows:

4. I think the Loughney sank about half a mile from shore. Cow Bay is on the Long Island shore. After leaving it the tug and tow ran along the Long Island shores until the disaster.

To the fifth cross-interrogatory on the part of plaintiff, answers as follows:

5. The barges on starboard side broke loose between 8 and 9 o'clock in the morning, about midway between Cow Bay and Huntington Harbour. I cannot say whether it was the heavy sea or what it was that caused the barges to *brake* loose. I have already stated all that I know about the efforts of those in charge of the tug to recover the barge Mary Loughney.

To the sixth cross-interrogatory on the part of plaintiff, answers as follows:

6. I did not say so.

93 To the seventh cross-interrogatory on the part of plaintiff, answers as follows:

7. I never knew that the tug struck the Loughney; the hawser between my boat and the tug was caught in the Loughney near the rudder, and the hawser tightening from some cause brought the bow of my boat, the Monroe, against the quarter of the Loughney. I do not recollect any effects from the collision.

To the eighth cross-interrogatory on the part of the plaintiff, answers as follows:

8. It was after the boats broke loose from the starboard side my boat was let go from the port side and a hawser passed to bow at the same time. After the disaster, I was towed astern.

To the ninth cross-interrogatory on the part of plaintiff, answers as follows:

9. My boat sank 7 days after the sinking of the Loughney. It was not on account of injury received by her by striking the Loughney at the time the latter sank. My boat was somewhat injured at time of the disaster by the rubbing of the fenders. What finally sunk my boat was another storm in a different place, that is, off Duck Island.

94 I never received a cent for damages to my boat from the Transportation Line. I never sued them or thought of doing so, nor ever asked them for a cent on account of the loss.

To the tenth cross-interrogatory on the part of plaintiff, answers as follows:

10. No.

[SEAL.] PERRY BURNS.

W. H. WILLIS, J'R,
Notary Public N. Y. City & Co.

Subscribed and sworn to before me this 28th day of January, 1875.

W'M H. WILLIS, J'R,
Notary Public in and for N. Y. City & Co.

Owing to want of time the further examination of witnesses under the annexed commission is adjourned until Saturday, February 6th, 1875, at 12 o'clock upon that day, at the office of Mess'rs Gray and Devenport, No. 9 Nassau st. and 11 Pine street, in the city of New York.

W'M H. WILLIS, J'R,
Notary Public N. Y. City & Co.

Pursuant to the above adjournment, the examination of witnesses under annexed commission was continued at time and place above stated as follows.

W. H. WILLIS, J'R,
Notary Public N. Y. City & County.

95 ROBERT FLETCHER, of the city of Jersey City, aged forty-six years or thereabouts, being produced, sworn, and examined on behalf of defendant, deposeth as follows:

To the first interrogatory on the part of the defendant, answers as follows:

1. My name is Robert Fletcher; my age is 46 years; my occupation is captain of a tow-boat; my residence is Jersey City.

To the second interrogatory on the part of the defendant, answers as follows:

2. I am acquainted with the Eastern Transportation Line, the defendants in this action; I have known them since 1863.

To the third interrogatory on the part of the defendant, answers as follows:

3. From January 1st to July 1st, 1873, I was a captain of a tow-boat in employ of defendant. I have been engaged on steamboats and tow-boats since 1860, and have been a captain of a tow-boat for last 3 or 4 years.

To the fourth interrogatory on the part of the defendant, answers as follows:

96 4. Is captain of the Game Cock. The defendants directed me to tow its boat, Mary E. Loughney, from New York City to New Haven, leaving New York City about the 14th or 15th, I think the 15th of March, 1873. I had 3 barges in tow, including the Mary E. Loughney; I forget the names of the other 2 barges. The name of captain of one of them was Burns, and the name of other was Captain Niles.

To the fifth interrogatory on the part of the defendant, answers as follows:

5. I remember the sinking of the Mary E. Loughney on that trip. I did see it myself. I was on her deck as she was sinking. It occurred about 12 miles east of Ex'cution light. Captain Burns saw the sinking from deck of his boat, which was tailed on behind the Game Cock. My mate, Arthur Merlin, saw it; he was at the wheel of the tow-boat. All the men of the steamboat saw it from her deck.

To the sixth interrogatory on the part of the defendant, answers as follows:

6. The captain of the Loughney went with her on that trip. He told me he was owner. He had one deck-hand with him.

To the seventh interrogatory on the part of defendants, answers as follows:

97 7. I left Cow Bay on morning of the 16th of March, about 3 (three) o'clock. Passed Execution about 4 in the morning; laid my course right for Stratford Point, as there was no wind; it was a fine morning. About 8 miles from Execution, off Captain's Island, the wind breezed up from southwest. I did not anticipate any heavy blow; it did not look like it. The first thing I saw, the boats behind me (schooners and vessels) letting everything run. I headed then for Oyster Bay. The squall came on like a thunder-clap; a heavy sea rolled up on us; I dropped Captain Burns' boat astern to a hawser; got a hawser on the Loughney, to drop the other two boats back. In the mean time the Loughney's tow-line parted. I intended to drop Captain

Niles' boat astern of the Loughney; I told the captain of the Loughney to drop the Laker astern of the Loughney. We had the lines all ready to make them fast; when I came to drop them back, all hands jumped aboard the tug from both boats—the Loughney and the Laker—excepting one boy; he stayed by them. I spoke to the captain of the Loughney, who had jumped off his boat in such a hurry as to cut his hand in the window. I asked him why he abandoned his boat. He replied that he would not stay aboard of her for one hundred
98 thousand dollars. When they dropped back there was no one aboard of them. I had given the line to the captain of the Loughney to make it fast to her cleat, but not having been properly fastened it slipped off. Captain Burns made his line fast at same time. I remember, now, that the name of Captain Burns' boat was the Allen Monroe and the other boat the F. B. Freeman. As soon as the line to the Loughney slipped, I lowered my small boat and wanted the captain of the Loughney to go with one of my men to his boat, but he refused; I then went myself with one of own men. We got a hawser to the two boats; it was attached to the Freeman. I then dropped the Loughney astern of the Freeman; tried her pumps; could get no water; put on two of her hatches, and looked in the cabin, but could see no water. The tug went ahead; the Freeman veered to the northward; her iron stern cut off her hawser, and she was adrift again, as well as the Loughney. The tug made a circle and came back and passed on another hawser on the Freeman. In the mean time the Loughney was deep loaded and rolled heavy in the trough of the sea, before we made the second hawser fast to the Freeman. We then went on again and I then returned to the Loughney; tried her pumps; found she had water
99 in her. I staid aboard of her, I suppose, ten minutes after that. I did think then that she was sinking; I was fixing the lines to hold her to the other boat during that time. My man was then on the Freeman; he hollowed to me that the Loughney was going down. I looked and saw that she was going down, so jumped into my small boat, went back to the Freeman, and cast the Loughney loose. The Loughney then sank stern foremost.

To the eighth interrogatory on the part of defendant, answered as follows:

8. When I was 19 years old I worked on a canal-boat. I ran her about two years. Ever since that time I have been on sailing-vessels and canal-boats, off and on. I reckon I know as much about canal-boats as most any man. I have been towing canal-boats and vessels about 8 years. I am perfectly familiar with the management, construction, and equipment of canal-boats, barges, and vessels. I would not like to say what was the condition of the Loughney when she left New York, because I did not go aboard of her there. She looked to me to be about 6 or 7 years old. If the weather had not been so bad as it was, she would probably have gone through all right. The tow-line of the
100 Loughney was good for nothing and parted; the line looked big enough but appeared to have dry-rotted.

To the ninth interrogatory on the part of defendant, answers as follows:

9. When I left New York the wind was fresh and from eastward, with a slight mist; this was on the 15th. We put into Cow Bay on that evening, because we do not think it safe to go on the sound with an east-wind. I have already stated the condition of the weather from time we left Cow Bay until the sinking; after the sinking, the gale continuing, we ran into Huntington Harbour and lay there two days. There

were two or three causes for the sinking. The first was because the Loughney was not manned. She was abandoned just as we dropped her back. If she had been manned, as the Monroe was, she would have pulled through all right. The second cause was, when she was in the trough of the sea the Freeman and the Loughney pounded together, when the latter sprung aleak. Those are the only causes that I have personal knowledge of, except that it was a most unusually heavy gale of wind.

To the tenth interrogatory on the part of defendant, answers as follows:

101 10. No one made any efforts to save the Loughney except myself and the boy with me.

To the eleventh interrogatory on the part of defendant, answers as follows:

11. Prior to dropping the boats back in the gale, the captain and man of the Loughney were, I suppose, down in the cabin. When they were dropping back they came up and made the hawser fast on the boat to the bow-cleat, they then jumped into the tug. They never went back to their boat after they left her them.

To the twelfth interrogatory on the part of defendant, answers as follows:

12. When I got aboard the tug again at Lloyd's Harbour, I asked him if his boat was insured. He said she was. He thought the insurance ran out that day. I said to him, captain, no one is to blame for the loss of your boat excepting yourself. He said that he did not blame me, that I had done all that I could. I told him to get back to New York as soon as posiable. He said he had no money. So I gave him five dollars and pulled him ashore to Huntington, and that is the last I have ever seen of him.

102 To the thirteenth interrogatory on the part of the defendant, answers as follows:

13. I have stated all that I know concerning these matters.

103 *Cross-interrogatories.*

To the first cross-interrogatory on the part of the plaintiff, answers as follows:

1. I have followed the water since 1843. I have been a tow-boat captain 3 years. I am now in employ of the Eastern Transportation Line. I am acquainted with Long Island Sound. I have been engaged in towing on Long Island Sound since 1863.

To the second cross-interrogatory on the part of plaintiff, answers as follows:

2. I kept a memorandum-book on the trip from New York to New Haven, on which the barge Loughney was sunk. I cannot produce it or a copy. I do not know where it is. I made the entries in the memorandum-book myself, noting the objects as we passed, and any incidents of the voyage; no alterations or additions have been made in this memorandum-book since it was first made.

To the third cross-interrogatory on the part of plaintiff, answers as follows:

3. We put into Cow Bay because the wind was easterly at that time, and I feared an easterly blow. We went in one day, and went out
104 the next day at 3 a. m. When we left Cow Bay the weather was fine, but a little misty. We had a fine sunrise; there was not a breath of wind all that time. After leaving Cow Bay, the wind in-

creased when about opposite Captain Island. At the time Loughney sank we were about 16 or 17 miles from where we anchored in Cow Bay, and about 8 miles from Huntington lights. I did not go by Huntington until 48 hours after the sinking, and then the wind was light from the southwest, and there was no sea.

To the fourth cross-interrogatory on the part of the plaintiff, answers as follows:

4. We were making from 4½ to 5 miles an hour. The tug is about 70 tons, 84 feet long, and cylinders 24 by 26 inches. We had a crew of 6 men, a full complement for that boat.

To the fifth cross-interrogatory on the part of the plaintiff, answers as follows:

5. I hauled up first in the morning for Conne't'cut shore, laying my course from Execution to Shatford; that was on the 16th. When we got along by Timecock Point we would be near the middle of the sound. At the time Loughney sank we were about two miles from Long Island shore.

105 To the sixth cross-interrogatory on the part of plaintiff, answers as follows:

6. Two boats on starboard side, the Mary Loughney alongside the tug, and the Freeman outside of her; the Monroe was on the port side of the tug. The tow, I think, was made up at Port Morris. I superintended the making up of the tow myself. I towed the barges alongside until the blow; we had three lines to the barge on the port side; we had three lines on to the Loughney on the starboard side, and two lines direct from the tug to the Freeman, outside a stern-line and a breast-line; the lines to the Monroe were one tow-line from our forward *b*leat to her after *b*leat, a bow-line from her forward cleat to our head, and the stern-line from our after cleat to her port quarter. The lines to the Loughney were as follows: One line for a tow-line from our forward cleat to her after cleat, on the port side; a stern-line led from our starboard quarter around her stern to her cleat on starboard quarter; the bow-line led from her port cleat, on port side, to our head. The lines from tug to the Freeman were a forward-line through our starboard
106 check to the Freeman' cleat on her starboard bow; the other line led from our bits after to the Freeman' starboard quarter. Those are all the lines we had out from the tug. The Freeman was made fast to the Loughney with a tow-line to tow her with, and two breast-lines a-forward and an after one. Our lines were all brand-new; we used 4 & 5 & 6 inch lines; all the lines that belonged to the tug were new; none of the lines belonging to the tug were made fast to the Loughney; she was made fast by her own lines exclusively; these lines would have towed her to New Haven if the weather had been moderate and good. The two lines to the Freeman from the tug were new and good, and our lines.

[SEAL.] ROBERT FLETCHER.

W'M H. WILLIS, J'R,
Notary Public in & for City & County of New York.

Subscribed and sworn to before me this 6th day of February, 1875.

W'M H. WILLIS, NOTARY PUBLIC, NEW YORK.

W'M H. WILLIS, J'R,
Notary Public in & for N. Y. City & County.

Fees paid.

W. H. WILLIS, J'R.

107 (Indorsed:) No. 36. Oct. sess., 1873. C. C. U. S., E. D. of P'a. Patrick F. Hope vs. Eastern Transportation Line. Commission to N. York. Received Feb'y 15, 1875. Opened in open court and filed February 18, 1875.

And afterwards, to wit, on the eighth day of April, in the year
108 last aforesaid, leave of the court being first had & obtained, plaintiff amends his declaration as follows, to wit:

In the circuit court of the United States for the eastern district of Pennsylvania, October sess., 1873, No. .

EASTERN DISTRICT OF PENNSYLVANIA, *ss:*

Patrick F. Hope, by J. Warren Coulston, his attorney, complains of the Eastern Transportation Company, who have been summoned to answer the plaintiff in a plea of trespass on the case, &c.

For that whereas heretofore, to wit, on the 14th day of March, A. D. 1873, the said defendants, being the owners of a certain line of steamboats engaged in the towage of barges and other vessels, to wit, from New York to New Haven, Connecticut, the said plaintiff, at the special instance and request of the said defendants, delivered to the said defendants a certain barge or vessel of the plaintiffs, called the Mary E. Loughney, of great value, to wit, of the value of three thousand dollars, to be towed from New York City to New Haven, Connecticut, and at New Haven, Connecticut, to be delivered to the plaintiff, for a
109 reasonable hire and reward; and it then and there became and was the duty of the defendants to use all proper care and skill in and about the towing, conducting, and delivering of the said barge, as aforesaid, and to provide a steamboat well and sufficiently manned and equipped for the purposes aforesaid; yet the said defendants, not regarding their duty in that behalf, did not use due and proper care and skill in and about the towing, conducting, and delivery of the said barge, as aforesaid, and in the providing of a steamboat well and sufficiently manned and equipped for the purposes aforesaid, but, on the contrary thereof, wholly neglected their duty in that behalf; and by reason of the gross and culpable negligence and want of ordinary care and skill of the said defendants in the towing and conducting of the said barge, and by reason of the insufficiency of the steamboat provided by the defendants for the purpose aforesaid, the said barge then and there became totally lost and sunk, to the great loss and damage of the said plaintiff, to wit, five thousand dollars.

And also for that whereas heretofore, to wit, on the day and year aforesaid, to wit, at the city of New York, to wit, within the district aforesaid, the said defendants, being the owners of a certain line of steamboats engaged in the towage of barges and other vessels, to wit, from New York to New Haven, Connecticut, the said plaintiff, at the special
110 instance and request of the said defendants, delivered to the said defendants a certain barge or vessel of the plaintiffs, called the Mary E. Loughney, of great value, to wit, of the value of three thousand dollars, to be towed from New York City to New Haven, Connecticut, and at New Haven, Connecticut, to be delivered to the plaintiff, for a reasonable hire and reward to be paid to the said defendants; and it then and there became and was the duty of the defendants to use all proper care and skill in and about the towing, conducting, and delivering of the said barge, as aforesaid.

Yet the said defendants, not regarding their duty in that behalf, did

not use due and proper care and skill in and about the towing, conducting, and delivering of the said barge, as aforesaid, but, on the contrary thereof, wholly neglected their duty in that behalf; and by reason of the gross and culpable negligence and want of ordinary care and skill of the said defendants in the towing and conducting of the said barge, the same then and there became totally lost and sunk; and also by reason of the premises the said plaintiff lost and was deprived of a large sum of money, to wit, of the sum of three hundred dollars, which he might and would have acquired as freight for the cargo of coal on said barge laden, and to have been delivered at New Haven as aforesaid,
111 to the damage of the said plaintiff ten thousand dollars; and therefore he brings his suit.

J. WARREN COULSTON,
Att'y for Pl'ff.

112 And afterwards, to wit, on the eig'th day of April, in the year of our Lord one thousand eight hundred and seventy-five, come the parties aforesaid, with their attorneys aforesaid, whereupon a jury being called come, to wit:

1. Thomas Gardner,
2. Archibald Graham,
3. Benjamin S. Israel,
4. Henry B. Pancoast,
5. Frank S. Sturdevant,
6. Warren Hale,
7. Joseph W. Johnson,
8. Henry C. Tennick,
9. Henry C. Rohm,
10. William H. Haskell,
11. John Sickel,
12. Samuel Glading,

Who are respectively sworn and affirmed.

And afterwards, to wit, on the twelfth day of April, in the year last aforesaid, the jurors aforesaid, on their oaths & affirmations aforesaid, respectively do say that they find for the plaintiff, & assess the damages at twenty-one hundred and twenty-five dollars and thirty cents, ($2,125.30.)

113 And afterwards, to wit, on the sixteenth day of April, in the year last aforesaid, the said defendants, by their attorneys aforesaid, moved for a new trial, and file their reasons therefor, as follows:

Circuit court of the United States, eastern dist. P'a, of October ses., 1873. No. 36.

HOPE
vs.
EASTERN TRANSPORTATION LINE.

Defendant moves for a new trial in above case, and shows as reasons therefor—

Reasons for a new trial.

I. The learned judge who tried the cause erred in admitting, under objection by defendants, the following question, viz: With your experience would it be safe or prudent for a tug-boat on Chesapeake Bay, or any other wide water, to tug three boats abreast with a high wind?

II. The learned judge erred in sustaining the objection made by plaintiff's counsel to the offer made by defendant's counsel to read in evidence the deposition of Henry Wilson, taken under a commission issued to New York from Philadelphia.

III. The learned judge erred in affirming the 3rd, 4th, and 5th points submitted by plaintiff's counsel.

IV. The learned judge erred in his answers to the 2nd, 3d, 4th, 6th, & 7th points submitted by defendant's counsel.

114 V. The verdict was against the judge's charge.

VI. The verdict was against the weight of the evidence.

SIDNEY BIDDLE,
GEORGE BIDDLE,
Attorney for Defendant.

And afterwards, to wit, on the twenty-fourth day of April, in the year last aforesaid, said motion for a new trial having been argued by counsel for the respective parties, and due consideration thereof having been given by the court now here, a new trial is refused and judgment is ordered to be entered upon the verdict.

115 Know all men by these presents that we, The Eastern Transportation Line, T. M. Richards, and Franklin Dundore, are held and firmly bound unto Patrick F. Hope in the full and just sum of five thousand dollars, to be paid to the said Patrick F. Hope, his certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators jointly and severally by the presents.

Sealed with our seals and dated the fifth day of June, anno Domini one thousand eight hundred and seventy-five.

Whereas lately, at a circuit court of the United States for the eastern district of Pennsylvania, in a suit depending in said court wherein Patrick F. Hope is plaintiff and The Eastern Transportation Line is defendant, judgment was rendered against the said defendant, and the said defendant having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said Patrick F. Hope

116 citing and admonishing him and appear at a Supreme Court of the United States to be holden at Washington the second Monday of October next:

Now the condition of this obligation is such that if the said Eastern Transportation Line shall prosecute said writ of error with effect, and answer all damages and costs if it fail to make its plea good, then the above obligation to be void, else to remain in full force and virtue.

FREDERICK ROBERT, *Pres.*
{ CORPORATE SEAL. } JAMES COFFIN,
Secretary.
[L. S.] THOMAS M. RICHARD.
[L. S.] FRANKLIN DUNDORE.

Sealed and delivered in the presence of—the word "of" in the 8th line from the bottom of 1st page having been first written over an erasure—

EDWARD L. OWEN.

As to Tho's M. Richards:

JOHN J. WILKINSON.
S. HARRIS.

As to F. Dundore's signature:

ROBERT CRAVEN.
N. DUNDORE.

117 CITY, COUNTY, AND STATE OF NEW YORK, *ss:*

Frederick Robert, being duly sworn according to law, says: I am the president of The Eastern Transportation Line. The seal affixed to the

foregoing bond is the common or corporate seal of said corporation, and the signatures of James Coffin, secretary, and Frederick Roberts, president, in attestation thereof, are in the proper handwriting of said secretary and this deponent.

FRED'K ROBERTS, *Pres.*

Sworn and subscribed before me this 5th day of June, A. D. 1875.
[SEAL.] EDWIN J. OWEN,
U. S. Commissioner for the Southern Dist. of New York.

Approved 17th June, 1875.

JOHN CADWALADER, *Judge.*

118 Be it remembered, that in the term of October, A. D. 1873, came Patrick F. Hope into the circuit court of the United States of the eastern district of Pennsylvania and impleaded The Eastern Transportation Line in a certain plea of trespass on the case, &c., in which the said plaintiff declared (see page 12, prout narr.) and the said defendants pleaded, (see page 20, prout pleas.) And thereupon issue was joined between them.

And afterwards, to wit, at a session of said court held at the aforesaid, before the honorable W'm McKennan, justice of the said court, at Philadelphia, on eighth day of April, A. D. 1875, the aforesaid issue between the said parties came to be tried by a jury of the said district for that purpose duly impannelled, (see page 112, prout list of jurors,) at which day came as well the said plaintiff as the said defendant, by their respective attorneys, and the jurors of the jury aforesaid, impannelled to try the said issues, being also called, came and were then and there in due manner chosen and sworn or affirmed to try the said issue, and upon the trial the counsel of the said plaintiff to maintain the issue on
119 his part called PATRICK F. HOPE, the plaintiff, who testified as follows:

I reside in Philadelphia. I was the sole owner of the barge Loughney in March, 1873, (bill of sale offered in evidence,) built by in Pennsylvania. Finished loading my barge on the 14th March, 1873, at South Amboy. Arrived in the evening in New York. Was taken in tow by Game Cock at Jersey City, North River. No other barges in tow then was lashed on starboard side. The two others were taken from Port Morris. The Allen Monroe was on the port side; the other boat was on my starboard side. After being lashed we went into Cow Bay shortly after noon on the 15th. I suppose the weather looked threatening. Did not know we were going into Cow Bay. Lay there till 16th between 3 and 4 o'clock in the morning; was well up in Cow Bay on the night of the 15th; was on deck when we came out of Cow Bay; wind was blowing from northwest; there was a strong wind; I told my man to keep watch during night and let me know when the tug was going. I saw captain of tug and told him the weather looked threat'ning and bad, we had better not go out. He said his employers did not pay him for lying still; the sea was running heavy; barges were still lashed. Out at an hour and a half. The Allen Monroe's line parted. I brought out a new six-inch line and fastened it to bow an hour before the loss. No attempt was made up to the time line parted to tow
120 the boats in any other way. (He, the witness, describes tackling.)

I saw line had stranded; went to captain and told him to drop back or we would soon sink. He said we could not make much headway. My line parted. He ran his line out. I went aft and found my boat was taking water. My man hollowed to me, "Come up or we will

be lost." We were 100 yards from tug. Freemen and my boat were pounding when I came on deck. I did not leave till she nearly sank. Allen Monroe ran up into my stern. This was after boats had broken loose. My boat was filling with water. When I came up water was up three feet. When I came out of cabin tug was 100 feet off. I had Richard Brannan as bowsman. The sea was heavy when we came out of Cow Bay. Have been boating 18 years. The usual way of turning is what we call hawser tier. In case it gets very rough another mode is customary. They are singled out. No attempt was made to do this till time of accident. Had been up the sound before. After we came out of Cow Bay we took a straight course for Stratford Point. I should suppose we would come out to Execution Point before taking our course.

Wind was from west. I am positive the wind was northwest. I am positive we were not near the western shore at any time. Do not recollect the time we passed Homestead Bay. Wind was strong
121 from N. W. from Cow Bay till time of accident. We had passed Homestead Bay and Oyster Bay, two harbors on the shore, before I was lost. We should have been protected by the land if we had gone on western shore; we could have made anchorage there anywhere almost. My boat was seaworthy. She had been overhauled by Fisher & Sons, in 1872, at the expense of $200. I had a nine-inch spring-line on board about 3 years old. I used it for no other purpose than tugging. It was in sound condition. I saw no dry-rot. Weather was cold and freezing. Sea washed six tons of coal overboard. Spray froze. Spring-line froze. Spring-line too short. It had not end enough to give. In the jumping the short frozen line was nipped off. Boat was built in 1866.

Question. What was the value of the boat?

(Objected to. Question changed.)

I refused $1,800 in 1872. She cost $3,000 originally for the bare hull.

Q. Have you any knowledge of what such a boat was worth?

Ans. I held boat at $2,000; refused $1,800. This is what I considered value of boat. (Bill of lading offered in evidence to show freight of $256.) Coal went down. There was nothing advanced. Received nothing on account. Boat was lost at 8; certain of this, for I looked at clock after she went down. She was going not over three miles an
122 hour. I could not tell. Length of my boat was 101 feet. Tug shorter than my boat; she might be 20 feet shorter; not a large tug. The captain got a hawser to Freeman, and towed them singley, and went into Lloyd's Neck. Wind was still N. W. Got into Lloyd's Neck shortly after nine o'clock. I received no insurance money. Captain gave me five dollars and I gave him old lines. I lost an overcoat, pants, and underclothing valued at fifty dollars.

And being cross examined, the witness said:

It was blowing a strong N. W. wind, and heavy sea on board. I thought it was dangerous; I told the captain that it was not safe. We were in a safe place; Cow Bay was perfectly safe. The accident couldn't have happened in the harbour.

Q. Why didn't you stay in Cow Bay?

A. Boat would have been helpless there; another tug mightn't have come. Waves were high enough to wash coal off just about time of accident. When we started there were no waves at all; we were in harbour. I judged then from way wind was blowing; sky was cloudy and gave evidence of heavy storm. I remonstrated with the captain before starting from Cow Bay. Allen Monroe's line parted on port side one-half of an hour before accident, about 7½ a. m. I took out one of my

lines to fasten it. I had that line, a 6-in. one, and a spring-line, 9 inches, two tow-lines, or running-lines, 1½ inches. The best line I had I gave to the Allen Monroe. I had a 5-inch stern-line. These were all. Stern-
123 line wasn't in use. I think 5-inch stern-line would have held me; it was 2 years old. Usual tug-line hawser is 5-inch. Water was up to my shoe-tops in cabin when I left in floor of after cabin. I had two pumps on board. My man was using them; he was pumping and attending to lines at the same time. Capacity of pumps, I couldn't say how water was coming in them or whether pumps would have kept out the water if they had been used steadily or no. I did not work the pumps myself. Hatches were down all the time until I left boat.

Q. How long was it after you left the boat that it sunk?

A. It was about 10 or 15 minutes, not more. Captain of tug-boat was on board 15 minutes after I had left. He didn't ask me to go on board with him. He left his boat to put a hawser on board Freeman; this was after I had left my boat. This was in order to let my boat drop astern. My boat was past saving. I was watching captain when he was on board my boat. I didn't see him do anything but let lines go. I didn't hear him ask me to go on board.

124 Q. Did mate remonstrate with you for leaving your boat and tell you to go on board?

A. No. My man left at same time with me. Neither of us were on board for 15 minutes before she sank. Dead-lights could be fastened from the inside; they were fastened all the time. I don't recollect saying anything of the kind.

Q. Do you recollect as a fact that the dead-lights were shut?

A. Yes; because I was in stern, and if they had been open I could have seen them.

Q. Are you willing to swear that you did not tell some one on board tug-boat that these dead-lights were open?

A. No; they were not open; I am willing to swear to it. It was an half hour before sinking that I told captain to drop back. I couldn't say if we had then dropped back the accident would not have happened. We would have had a better chance.

Q. Did captain make any attempt to drop boats back?

A. He dropped Allen Monroe. He made no attempt to drop us astern until after heaving loose, only at time he went on board the Free-
125 man. In my opinion this was only an attempt to save the Freeman. It would have had the effect of protecting both. The cause of accident was coming in of water. Heavy seas and other boat, Freeman, had knocked her and knocked her timbers in, and water came in in that way. I was on board while this bumping went on.

Q. Why didn't you let your boat drop astern?

A. Well, there was only a boy on board the Freeman, and he couldn't assist in anything. We couldn't drop him and he couldn't drop us at all. That was the reason that we couldn't do anything. I and my man were on board there.

Q. Were you and your man or were you not able to drop Freeman astern at that time?

A. No, for the reason I have given. I can't say whether my line broke or slipped; I was in the cabin. I can't say how long this was before; it was shortly before accident. At time breast-line parted I was in the cabin.

Q. Do you recollect Capt. Fletcher fastening a line on board your boat about this time?

A. I couldn't say. He did put a line out to help my boat. I

126 was then at time helping my man. Couldn't say how much water was in then.

Q. Didn't capt. pass you hawser just before your boat broke loose?

A. Not that I know of. Brannan, my man, cut hawser that was foul on stern breast-line aft between tug and Freeman. When tug-boat came up, I jumped on board of her. No one remonstrated with me for so doing. It was some time after this that capt. went on to Freeman to arrange this. We got away again; then capt. went across. He went on board Freeman by a small boat, with a hand with him. When I left I can't say how much water was in. I didn't sound it. Can't tell. I think storm increased with the sun. They got into Lloyd's Harbour. I understood Freeman was hurt, and I understood that Monroe was lost after she left Lloyd's Harbour. Last insurance I had ran out on 10th December, 1872. I didn't try to renew it. I don't know why I didn't. I didn't feel like it.

Upon being re-examined, witness said:

I didn't interfere with capt. of tug-boat at all. I should judge there was about two feet of water in my boat when I left the aft cabin.

127 Pumps were of no use while vessel was rolling in the sea. Couldn't stand at pumps to do anything; we were pitching and rolling. I had put hatches down at Amboy. Boat was full of coal, 6 tons of coal on top of hatches. These hatches were made of 1½-in. white pine, corked. I left boat to save my life. Nearest boat was the Freeman. I had no yaul-boat. I was on board of tug at this time. The captain didn't attempt to drop back until after boat separated and was adrift. The hawser back was made fast in a manner that couldn't be undone. Tug was pulling on that line; tendency when line was cut was to separate the two boats. My man told me that he had cut it. I met the agent of the Game Cock line in New York. I never paid any of this tow money.

BRANNAN, who testifies as follows:

I was hand on board of this canal-boat; am 25, 1 March, '75. I had been some time on board. Have been following water 15 y'rs. Two men is a complement for such a boat. I was on this boat from

128 June, 1872, till March, 1873. I had worked her during winter, open winter. Her condition was sound. Boat sweated a little. We had good lines; bow-line, spring-line from steamboat and stern-line, all the usual lines. We were taken in tow by the Game Cock at Jersey City. The Loughney was the first boat. Our boat was on port side, and two on starboard. (Explains fastening.) We went into Cow Bay; near noon at Cow Bay. Weather was bad then, not fit for canal-boats. We lay there from midday till 4 or 5 o'clock next morning. I was on deck when we started. Did not see captain talking. I waked Hope up when we started. The weather was bad. Could not tell how wind was blowing. There was no compass on board. The boats were alongside all the time, no attempt to tail them out. I have frequently been towed on barges. The usual way of towing is by singleing them out in bad weather so they can't chafe or rub or keeping them astern. Wind was off the Connecticut shore when we got into the sound. We kept the lee shore. I have been once up the sound before. There was no attempt made to go into harbor before vessel sank. They kept in the middle of the sound, pretty well out. I recollect the breaking of lines.

129 Last boat about eight o'clock. Line broke a short time before. We had then been out of Cow Bay three or four hours. The wind was increasing all the time. The line that parted first belonged to the

Monroe. Spring-line was about a nine-inch line. Cold was the weather; water was freezing as it splashed. The spring-line stranded on railing of boat. It was a very thick nine-inch line. Up to this time of line-stranding no attempt was made to drop astern. The line could not stand, and soon parted after we got into the trough of the sea. It was on the Freeman that line was cut. This was to get the line clear. We broke loose altogether from the tug. We left our boat when the tug came around. I did not see any water in her stern. The hatches were on at the time. Boat would not have lived if hatches had not been put down. Coal was piled up on top of hatches. Our new six-inch line was passed across between Monroe and Loughney. This line was cut loose by me by order of steamboat. I do not recollect who gave order from the steamboat. Men were all excited. I left to save my life. The tug had not taken us to western shore at all. Getting up to windward shore is a protection.

No attempt was made to get over. She was about two miles from
130 lee shore when she went down.

And being cross-examined, witness said:

There were four hatchways in all, and eight hatches. Coal was on two of the after-hatches, not coal on all of them. I didn't see them attempt to go into any particular harbor. Don't know how wide sound is here. When we were furtherest out I think we were in the middle of the sound. I can't tell how far out. This was when we took our course. When the boat sank we were two miles from shore. Couldn't tell about 1 h'r or 1½ h'rs after we left Cow Bay that we were in the middle of the sound. I am sure all hatches were on up to the time I left the boat. I hooked dead-lights, and hooked them after we left New York. They were not opened by me.

Upon being re-examined, witness said:

Q. Had any order been given by captain of the Game Cock as to hatches?

A. No, sir; they generally give any order capt. of boat.

JOHN W. SEAMAN, who testified as follows:

I reside at Land Point; I am the light-house keeper; I was there on the 16th of March. This is the point after you come up on Cow Bay. I have record of the weather. This is (paper produced) the return I make
131 every quarter to inspector of 3rd district. This was made for quarter ending March. This is on every return. That is my signature. This includes January, February, and March. When I put out lights at sunrise, I stay up ½ to ¾ of an hour, and when I come down I write down which way wind is. 11 m'ts past 6 wind was N.W., high wind and cold, that way then.

Light-house keeper's return offered in evidence.

And being cross-examined, witness said:

The last time I had been up before this was about 12 o'clock at night.

WILLIAM H. FISHER, who testified as follows:

I am ship-carpenter, &c.; know the Loughney; I overhauled her thoroughly in summer of 1872. $200 worth of repairs. She was perfectly sound. I did this for Captain Hope. She was perfectly sound, and needed nothing than we put on her.

And on being cross-examined, witness said:

She did not look to be over two years old. She looked like a new

boat. Boat was not scarred up. I can form a pretty accurate estimate of age of boat. About 12 years is the average life of a boat of this kind. I do not know how much the value of this boat would be if 6 or 8 years old. She was worth $2,500. There was no evidence of being
132 scarred up when I saw her. Boat bore evidence of good care.

JAMES LOUGHNEY, being sworn, testified as follows:

I know the barge Loughney. She was built by me and my son-in-law, one-half each, in Jan., 1872. I sold out in full to him. I have not seen her since the fall of 1872. Her condition then was *though*. I know nothing about her lines then. I buy and sell boats frequently. I have been connected with the barge line for a long time. I offered $1,800 for the Loughney in fall of 1872. He wanted $2,000 for her. I recollect the occurrence. It was before my offer of $1,800 that she was repaired. Because the boat was called after my wife I offered $1,800.

PATRICK MCCARTY sworn, who testified as follows:

I am a steamboat man and waterman. I am agent for a transportation boatman's agent of C. E. Dilkes & Co., who are engaged in the transportation business by barges and other vessels. I was captain of a tug in 1862. Was captain from that time with short intervals. I was one of agents of the line. I had general business making up tows, &c. I am not familiar with the sound. I have towed vessels in Long Island Sound. I always had a pilot. I was captain of a tug for seventeen years. The mode of towing three barges depends upon the
133 weather. It is always a measure of discretion with the captain. They will not go so fast abreast of boat. When weather commands we tow them astern. When the weather gets bad we make a tier of them behind, and if worse we tail them out singly. Familiar with Chesapeake.

Q. With your experience, would it be safe or prudent for a tug-boat, on Chesapeake Bay or any other wide water, to tug three boats abreast with a high wind?

(Objection by def'ts overruled & exceptions by def'ts' counsel. Signed W. McK.)

Ans. By no means.

Q. Why?

Ans. Because the colliding of those barges against each other does more harm than the sea itself.

Q. (Describe the mode of towing as always prudent to take a windward shore instead of a lee shore.) When you are going on the lee shore and wind is high is it prudent to take harbor?

Q. Would it be prudent if wind was high to take Homestead shore?

Ans. It depends on wind and weather entirely. If wind was high and weather rough it would be prudent to go to Hart Island if vessel was only out a mile. I am not conversant with this harbour. In making a harbor with canal-boats we keep them head to sea and wind.
134 I should have gone to western shore and sought a harbor. Towing them almost knocks them to pieces.

And upon being cross-examined, the witness said:

Q. Supposing the wind from N. W., would it be possible to go over towards lee shore?

Ans. I don't know what you mean. It depends upon where you locate me altogether.

Ques. About 4 miles out.

Ans. There the sound becomes a great deal wider. It would require a pilot with knowledge and skill to go into land there. Sound runs there N. E. and S. W.; you cannot take a regular course with barges, sound steamers only can do it. I have tugged boats in Long Island Sound. I was in tug-boat Henry Delaney. I have tugged boats with M. Roberts there.

M'r CORLIES, who testified as follows:

I am 39 years of age next October. Am pilot of tug-boats. Have been in business 22 years, and am familiar with tugging barges. Have tugged on Long Island Sound, steamer U. S. Grant.

Q. Is it prudent to tug barges this way? (Shewing it.)

Ans. With a strong N. W. wind it would be very imprudent; good enough in good weather. It wouldn't be prudent to take lea shore in rough weather.

135 Captain LAUGHLIN, who testified as follows:

I am 46 years of age; am familiar with tugging barges since 1849. In '49 I was in Flanagan's employ. I went into Clyde's employ in '61. My business is superintendent. I helped captain in making up their boats.

Q. Would it be prudent, with a high N. W. wind in Chesapeake Bay or Long Island Sound, to tug boats in this manner? (Shewing it.)

Ans. No; it wouldn't. They would pull down each other's fenders, and knock against each other. They should be put three abreast or four abreast, behind the stern; howser on outside boat on each side in line. If weather gets rough, they should be singled out. A good boat singled out will live as long as a tug-boat.

And being cross-examined, witness said:

The' would, if abreast of each other, pound each other as much as if they were abreast of the steamboat. There is danger of the sea breaking over if they are single, when the sea is high enough. Most boatmen would rather be aside steamer. If the waves are very high, the sea would do more harm, and would swamp them entirely.

Upon being re-examined, the witness said:

136 Our instructions are, when our men are in a harbour, not to go out, or to seek one if they can.

And, on re-cross examination, witness said:

There is more danger of ropes breaking and shearing when single, but captains generally take risk. My instruction is to single them out in all cases, and if they die let them die.

WILLIAM HOLMES, who testified as follows:

I was at Jersey City with canal-boat John J. Crittenden. I was weather-bound at Jersey City. I got up about 7 o'clock on morning of the 16th. The wind was N. W. I couldn't get out on account of weather. We didn't leave till the afternoon of the 17th. It was then a gale until afternoon of the 17th.

Upon cross-examination he said:

I was in one of the Pennsylvania Railroad Company's tows. I started from Jersey City on the afternoon of the 17th; this was Monday I reported to the co. that I was ready on the morning of the 15th. I was then at the Morris Canal on the morning of the 15th. The company generally send a tug when they want the boats to go. They did send down their tug about noon of the 15th.

THOMAS H. MALONE, who testified as follows:

137 I am 31 years of age; am boatman. I have been such ever since I have been able to work.

Q. What is manner of tugging in high winds?

Ans. Well, the safest way is to single them out. I have been towed in about every kind of way in rough weather.

Q. In your judgment is such a way (shewing) a proper or safe way in rough weather?

Ans. No, sir; it is worse to tow abreast then alongside of each other.

Upon being cross-examined, witness said:

It is prudent to go on tugging until weather gets very bad. There is more danger of shearing or going side-ways on hawser than steady when alongside. It is easier to steer when *then* they are alongside of each other. It is hard when they are heavily loaded and singled. Shearing is jumping from side to side. The rougher sea is, the more difficult it is in steering when single. When boats out with a steamer in very rough weather, I think it would be safer to single them out. There is then nothing for them to pound against. I don't believe there is as much danger of ropes breaking when single as when alongside.

138 The waves, if they were high enough, would, of course, swamp them single. They can go fast alongside. I don't think it would be a good thing to change from side-ways to in-line until they begin to pound. It is the most customary way to go alongside in good weather. I guess they would go faster. They shouldn't be dropped back until they begin to pound.

And being re-examined, he said:

Q. Isn't it usual when three barges are together abreast to lash tillers outmost?

Ans. Yes, it is. They don't need steering at all, abreast very little. They do swag a little. Tiller of starboard boat three-quarters port, or vice versa. This whey they are all of them abreast. When they are singled out each man steers. It ain't customary to steer when they are three abreast that way. It is not usual when wind is very high to tug alongside. In a high sea and bad weather you must single out.

And upon being re-cross-examined, he said:

When they are one behind the other that way they will shear some. The rougher the weather the harder they will sheer.

And they, defendants, to prove the issue on their part, called—

ROBERT FLETCHER, who testified as follows:

139 I am a pilot on Long Island Sound and New York Harbour. I have a knowledge of towing, and have been 47 years in the business. I have been constantly engaged in the business since 1862. I am now master of tow-boat in the employ of the Eastern Transportation Company, defendants. I remember accident that has been described here this morning. I was the captain of the Game Cock. I know the plaintiff by sight, and I recollect the name of his barge.

Q. Will you just describe this from the time you left Jersey City?

Ans. I left Jersey City about 10 o'clock in forenoon, about 15th March, with one boat, the Loughney. I took two more boats off Freeman's Point off another tow-boats; I took two on starboard side and one on port; the Loughney and Freeman on right; Freeman outside.

Q. Shew how boats were fastened together.

Ans. That is the way we always rig them when they go fast. This

was amply sufficient. Each boat gets a bow-line to it, and a spring-line and a stern-line. All these belonged to each one of the barges. They were not the steamboat's.

Q. What lines belonged to the steamboat?

Ans. The two breast-lines foreward and the two quarter-lines.

140 It is customary to use the lines in this way. The barges always give a bow-line, stern-line, and spring-line when they have got it. It is their duty to have it. Hunter's Point is about 6 or 7 miles out from Jersey City. We started on Saturday, 15 March, about 10 o'clock. After we got tow made up, we went up through Hell Gate. Nothing occurred till we go' abreast of Hart Island. There weather looked threatening; wind looked as if it were coming out of the eastward. There was a light wind from the eastward. It was about 4 or 5 o'clock p. m. when we concluded to make a harbour in Cow Bay. We anchored in Cow Bay until 3 a. m. next morning. There was no wind at all at that time. We went right out into the sound. We have, on account of gangway rocks, to go right out into sound, and then take our cou'se. I passed out by Execution Rocks at 4 o'clock in the morning. That's opposite Sand Point. This is where light-house man was who testified. There was no wind at that time, and no sea. I felt we were going to have a good day, and shaped my course right for Stratford, 33 miles from Execution, on the north shore. Line represents course that

141 we took. (Shown map on which course was marked.) The weather was a little overcast. There was no wind, and no sea. I kept right on my course until 20 minutes before 6, (few minutes before six.) I was about abreast of Captain's Island, and it breezed up to the westward, and squall came up at that time very sudden. All the way I could see it were its coming up behind me. First think I took notice of the wind was vessels ahead of me were shortening canvas. As quick as I saw that, it began blowing fresh, strengthened into a gale. It came quickly; I got breeze right off. Well, I kept on my course. The wind was due west, dead aft. There was no harbour I could make. When I saw sea coming up so heavy, I began to think I had better single my tows out. First thing I done was to drop Allen Munroe back to her hawsers, 4 to 5-inch hawser. After that tow-line of Loughney parted, but cross-line had stranded. While we were running hawser from stern to bow of Allen Munroe, the line from bow of Munroe to Loughney before that stranded. They got another one out.

142 Whether they cast it off or cut it I don't know. Tow-line on Loughney parted us on a little before that time. Then we got another out from the steamer, and I think captain got another out to us. This was about time we got the Monroe back. Then we had one hawser out from our starboard quarter to Freeman's starboard quarter. They couldn't get clear, and they cut it. That was to get the Loughney back and the Freeman under the Loughney's stern. The slipping of the hawser slipped from the Loughney's cleet, and this set boats adrift. This was what caused it. The boy of the Freeman and the deck-hand of Loughney slipped this hawser two or three times around cleet, and it slipped. I calculated to let Freeman go back, and then let Loughney go ahead. Captain of Loughney jumped aboard when we came back. I lowered my boat then, and asked captain of Loughney if he wouldn't go into his own boat. He said he wouldn't go for a hundred thousand dollars. Then I jumped down in my own boat. I afterwards determined to get Freeman first, because I could get hold of her easier and quicker. The hawser had hold Freeman, and it broke on the sharp iron-deck.

needed nothing than we put on her.

And on being cross-examined, witness said:

She did not look to be over two years old. She looked like a new

143 PHILADELPHIA, *Friday, April 9th*, 1875.

Examination of Captain Flecher resumed.

By M'r A. S. Biddle:

Q. Just begin at the time you started out from Cow Bay, on the morning of the 16th of March, and go on with your story, and tell the jury what kind of weather you had when you started from Cow Bay, and what happened.

Ans. I started out from Cow Bay on the morning of the 16th, about 3 o'clock. I passed by Execution light about 4 o'clock in the morning. The weather was fine. I shaped my course for Stratford Point, and kept right on my course until Captain's Island light bore due north. The wind began to breeze up at this time.

By the court:

Q. How far was that from Cow Bay?

Ans. Between 8 and 9 miles from Execution light. I came about 12 miles at that time. It was about 6 o'clock in the morning when the light bore north.

By M'r Coulson:

Q. When you speak of miles, do you speak of nautical miles?

Ans. I speak of the miles on Eldridge's chart, and they are
144 nautical miles. I believe the other maps give statute miles. A nautical mile is a little farther than a statute mile.

Q. Do you speak of statute miles or of nautical miles?

Ans. I say that it is between 8 and 9 miles by Eldridge's chart.

Q. And you mean nautical miles?

Ans. Yes, sir.

By M'r A. S. Biddle:

Q. How fast was your tug-boat going then?

Ans. We were averaging 4 miles an hour, or 4½ miles perhaps. When the wind commenced breezeing up I kept on my course. I did not anticipate any bad weather at that time. I looked back and saw a vessel that was to the westward of me shortening canvas, and I saw that there was a heavy squall at the head of the sound.

Q. What canvas was this vessel shortening?

Ans. The gaff-topsails; taking them in and getting them under reefed canvas. Then I began to think it was getting about time to back the boats in the tow. The sea was beginning to come up, and there was a pretty heavy lough on by that time; not what we would call a
145 heavy sea, but a chop sea. It came up quick, and I suppose it was probably half past six o'clock when I commenced dropping the Helen Monroe astern. The steamboat was on her port side; that is, the left side; and in the mean time, while we were dropping her astern, the boats got surging and the Loughney's bow-line parted. We got out another line to hold them as quick as we could, and we got the other boat pretty well back by this time, and then we commenced dropping the boats on the starboard side. We had a hawser which led from our starboard quarter to the Freeman's starboard quarter. It was a new hawser, and they had made it fast so that it was jammed, and they had to cut it. They then took this hawser and carried it forward to the Loughney and made it fast on her forward cleet, and I had a hawser passed to the Loughney from the steamer, so that when we got the boats back the Loughney would drop under the stern of the steamboat. We dropped the Monroe back about 100 f't. The tow-line from the

was amply sufficient. Each boat gets a bow-line to it, and a spring-line and a stern-line. All these belonged to each one of the barges. They were not the steamboat's.

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Loughney parted, and then we got the hawser from the starboard quarter of the Loughney to the starboard quarter of the steamboat. I passed the hawser to the bow of the Loughney, and it was made fast
146 there by one of the men who belonged to the Loughney, or, I think, by the boy who belonged on the Freeman. When we got it fast we let go our bow-line. I think the deck-hand on the Loughney and the boy who was on the Freeman made fast the line. It was not made fast, for as soon as we got astern it slipped off, and then the two boats, the Freeman and the Loughney, were side by side. There was nobody on board the Loughney at this time.

By M'r George Biddle:

Q. How many hands were there on the Loughney?

Ans. The deck-hand and the captain.

Q. When did they get off of that boat?

Ans. They must have jumped off before the two boats got astern, and jumped into the tug-boat, because they could not have jumped off at any other time. The captain of the boat, when he jumped from the Loughney onto the tug, cut his hand in the window of the engine-room, about 8 or 9 feet aft of the aft bulk-head of the cabin.

Q. When did the hawser, which you say was not secure, slip?

Ans. The moment we got ahead and the line became taut.

Q. Was there any strain on it?

Ans. Yes, sir, the moment we made the line taut. The mo-
147 ment I tried to go ahead and the strain came upon the line, I saw it slip.

Q. At that time was there any danger on board the Loughney when Captain Hope deserted his boat?

Ans. There was no danger in a man staying there, but there was danger of his boat staving her sides in by being jammed against the other boats if there was nobody on board to attend to the lines.

Q. Had or had not the captain of the Loughney loosed the line running between those two boats, as he ought to have done?

Ans. There was a boy on board of the Freeman who jumped off when the Helen Monroe came along. When I saw the boats in this position I lowered my yawl as soon as possible, jumped into it myself, coiled up 8 or 10 fathoms of the hawser, and told the captain of the Loughney to get into the boats with me to go to the Loughney.

Q. Did he go?

Ans. No, sir.

Q. Did he refuse to go?

Ans. He would not go. He said he would not go.

Q. Who did go with you?

Ans. One of my men. The captain of the Loughney said he would not go for 100,000 dollars. That was his expression. Then I
148 lowered my boat, and, as I said, got into it myself, and coiled 6 or 7 fathoms of the hawser up forward in the bow of the boat, calculating to run to the Loughney. I got my man to get in with me, but we found we could not get to the Loughney on account of the hawser being too heavy, and I let it go, and they hauled it in on the bow of the steamboat. After they hauled in the hawser on the bow of the steamboat I went over to the Loughney with the yawl, and went on board of her the first thing.

Q. Between the time that the captain had jumped from the Lough'ey on the tug and the time when you managed to get on board of the Loughney, there was, of course, nobody on board the Loughney?

Ans. No, sir. My mate, Arthur Mellen, had charge of the steamboat. I told him to take the wheel and take a round turn—go around and come up alongside of the other two boats. That is my impression of the way in which he rounded to, and that is how he came up. When we got abreast of him he threw me his heavy line, and we carried the hawser and made it fast to the Freeman' bow, and the Freeman took a sheer, and the sharp iron on its bow cut our hawser right off.

149 By the court:

Q. At this time the Freeman and the Loughney were tied together, were they not?

Ans. Yes, sir; they were tied together—fastened—and I had two lines out, one aft and one amidship; but the midship-line was slack so that she could go right back under the stern. If the hawser had not parted I would have saved both of those boats and taken them into Oyster Bay.

By M'r A. S. Biddle:

Q. What caused the parting of the hawser?

Ans. All the western canal-boats, as they are called, have a sharp iron on their bow, and the moment the Freeman sheered this sharp iron cut off the hawser. If I had had time I would have put some parcelling on the line and saved it, but I hadn't time. Then the Loughney came up and struck the Freeman several times in the stern, and that, in my opinion, is what sunk the Loughney. It was this boat pounding into the Loughney. While the steamboat was rounding to I put the hatch on the Loughney.

Q. Was the hatch open?

Ans. Yes, sir; me and my man put it on.

150 Q. You are positive of that?

Ans. I am certain of it.

Q. Was the water running in over the coal before you put on the hatch?

Ans. The water was rolling right across her decks whe' she lay in the trough of the sea; but I don't think there was a great deal of water went through her hatches. I tried the pump to see how much water there was in the barge.

Q. What did you find when you used the pumps?

Ans. I pulled half a dozen pulls on the brake of the pump, and I concluded there was no water by the way the pump worked.

Q. Did it suck?

Ans. Yes, sir; it sucked a little, but it acted as if there was only a little water, not over 3 or 4 inches, in the barge. The pump was very free. I said to my man, "We can save all these boats;" and I had no idea but what I could save them. I did everything I could to save them. When the hawser parted I went back and went on to the Loughney. I was aboard of this boat when the hawser was made fast. I jumped off of this boat when she struck on to the Loughney, and was calculating to try her pumps again when the Helen Munroe swung

151 around to leeward. When she swung around my impression is that she gave this boat a pretty good punch in the stern.

Q. Did the steamer go around the second time?

Ans. Yes, sir. Whether or no she rounded to the southward or the northward I won't be positive, because I was aboard of these barges and I didn't think anything about the steamboat. I had all I could attend to on board the barges, and I had a competent man on the steamer.

Q. But the steamer did make around again?

Ans. Yes, sir.

Q. She came round the boats with the *the* Helen Munroe behind her?

Ans. Yes, sir; and when she came round the second time they gave me the hawser, and I made it fast myself to the Freeman, and it was not but a few minutes after that when I came back to the Loughney again, and when I came back my man says, "She is going down;" and she was. She was settling aft; and when I jumped into my little boat she was going up forward and going down aft.

Q. Showing that the water was coming into her stern?

Ans. I don't know where the water was coming in. Vessels generally go down stern first, anyhow.

152 Q. And then you saved the Freeman?

Ans. Yes, sir.

Q. How did you prevent the iron fenders cutting the rope off again?

Ans. I went forward and fastened it.

Q. Did you throw the Freeman behind the tug?

Ans. Yes, sir; right forward of the Monroe, behind the tug.

Q. From the time this squall came upon you until the Loughney went down, how long was it?

Ans. About two hours.

Q. That, then, would bring it about 8 o'clock in the day?

Ans. Somewhere about 8 o'clock. It might have been an hour and a half after we got the boats dropped back before the Loughney went down.

Q. How long were you actually on the Loughney?

Ans. I suppose I was on her 40 minutes with my man. My man was not aboard of her at all, only to help me put the hatches down.

Q. Was the hawser that was attached to the Loughney the first time properly fastened to the cleet?

Ans. If the hawser had been properly fastened to the cleet I would have went on with those two boats, and then the Freeman would have dropped back under the stern of the Loughney and I should have went straight into Oyster Bay instead of going into Huntington, be-

153 cause I had drifted down so that if I had undertaken to go into Oyster Bay I would have had to steer straight south, right in the trough of the sea, and probably would have lost both of these boats before I could have got in.

Q. Was this hawser properly fastened to the cleet?

Ans. No, sir; if it had been it would not have slipped.

Q. With regard to the Freeman, was there anybody left in her during this time?

Ans. There was a boy on board the Freeman, I suppose about 18 years or 19 years old.

Q. Did he stay in his place?

Ans. When the Munroe came up and struck the Loughney, I guess he jumped off, and that was the last I saw of him until I got into Huntington.

Q. He jumped into the Munroe?

Ans. Yes, sir.

Q. Did he stay longer than Captain Hope and his deck-hand?

Ans. Yes, sir.

Q. Who had you to move these two boats?

Ans. No one but my man and myself. We stayed aboard of them until we got into Huntington.

By Mr. George Biddle:

Q. Did the master of the Munroe remain on board?

154 Ans. He did.

Q. The whole time?

Ans. He fastened the hawser himself.

Q. Who is the master of the Munroe?

Ans. I think, Perry Burns.

Q. With the wind to westward is there any windward shore in the sound?

Ans. There is no western shore on Long Island Sound; it is only north and southwest. I was steering my course east by north; that is the course we always take until we get up to Lloyd's Neck, and then I go off more to the north. When I saw that I had to make a harbor, there was no harbor for me to make but Huntington. When I first began to drop the boats back I was abreast of Captain's Island, and running for Lloyd's Neck.

Q. Could this accident have occurred if the first hawser had been properly fastened to the cleets?

Ans. No, sir; I don't think it could. I know it could not. I could have saved the one as well as I did the other two.

Q. If these two men, Hope, the captain and owner of the Loughney, and his deck-hand or bowsman, had remained at their posts and done their duty instead of jumping off, would this accident have occurred?

Ans. No, sir; I don't think it would. I could have saved the
155 whole tow if every man had stayed where he belonged. I could have saved them as it was, if the hawser had not parted a second time. I mean that the first time it slipped off the cleet, and the second time it parted.

Q. Why do you say you could have saved all the boats if these men had stayed at their posts?

Ans. I have dropped boats back in the same position, time and time again, and never lost but two boats.

Q. Then I understand you to say that there is no danger in dropping back a Schuylkill boat in that way?

Ans. Not at all.

Q. Would the accident have occurred if the second hawser had not broke?

Ans. It is my positive belief that if the hawser hadn't parted the second time I should have got my boats safe into Oyster Bay.

Q. I also understand you to say that Captain Hope, the owner of the Loughney, refused point blank to go back to his boat when he was directed to do so by you?

Ans. He told me he would not back.

Q. You did get finally into Lloyd's Neck with the other two boats, did you not?

Ans. I arrived safe in Lloyd's Harbor.

Q. When you did get into the tug again, did you see Captain Hope?

Ans. Yes, sir.

156 Q. Did he say anything to you?

Ans. When he was in there he said he wanted to get to New York as soon as possible.

Q. What else did he say about the accident?

Ans. We had a long talk there. He allowed he had no money and I gave him $5.

Q. What else did he say?

Ans. I said to him, "In losing this boat there is no one to blame for it but yourself; you left your boat and abandoned her," and he said he did not blame any one. He said he thought I had done all I could.

Q. Then he acknowledged that it was his own fault, did he?

Ans. Yes, sir.

Q. Did you have any further conversation at Lloyd's Neck, or when you were coming into Lloyd's Neck?

Ans. No, sir; this was in Lloyd's Neck, just as we were coming to anchor.

Q. Captain Hope stated, in his examination-in-chief, that before you started from Cow Bay he came up to you, spoke to you, and remonstrated about your going out in that weather. Did you have any such conversation with him?

Ans. I never saw him at that time. I never saw him at all until the next day. His deck-hand helped me to pull up the anchor and
157 get ready to go.

Q. Did any one make any such remark as that to you?

Ans. No, sir.

Q. Did the deck-hand make any such remark to you?

Ans. No, sir; there was no occasion for making such a remark.

Cross-examined by M'r Coulston:

Q. What time did you get into Cow Bay?

Ans. It was somewhere about 4 o'clock in the afternoon; I think between 4 and 5—somewhere about there.

Q. Have you no way of fixing your recollection definitely?

Ans. Not at present; I had a log, but I lost it.

Q. Have you your log?

Ans. No, sir; not of that trip.

Q. You have been examined before in this case, have you not?

Ans. I gave testimony in New York.

Q. This is your testimony, is it not, and this your signature?

(Deposition and signature shown witness.)

Ans. Yes, sir.

158 Q. Were not you called upon to produce your log when you were examined before?

Ans. I forget whether I was asked or not.

Q. I will let you refer to your testimony and see if you have forgotten: "Q. Did you keep a log-book or memorandum-book of any kind on the trip from New York to New Haven when the *bark* Mary E. Loughney was sunk? If so, produce it or send an exact copy of the entry made as to the disaster, and of all entries made from the beginning to the end of said trip upon which the sinking of said barge occurred. Tell when and by whom any such entries were made, and if any alterations or additions have been made in the log since it was first made." You have made answer: "I kept a memorandum-book on the trip from New York to New Haven on which the *bark* Mary E. Loughney was sunk. I cannot produce it or a copy of it; I do not know where it is. I made the entries in the memorandum-book myself, noting the places as we passed, and any accident of the voyage." That was your answer?

Ans. Yes, sir.

Q. When did you last have that log-book?

Ans. I kept that log-book of that one trip more correctly than I did any other, because I was 15 days making the trip from the time I left
159 New York until I got back. I changed boats soon after, from the Game Cock to the Alert, and I have never seen the log since.

Q. You lost two boats on that trip?

Ans. Yes, sir.

Q. And you mean to say to this jury that you took no more care of this log-book than you have stated?

Ans. Yes, sir. The log-book was left on board the Game Cock, and I have never seen it since. It was not a log-book, but it was memorandums that I noted down, and little incidents as they happened on that trip. I left it on board the Game Cock, and have never seen it since.

Q. Did you keep any log-book on that trip?

Ans. No, sir; only a little memorandum-book. We used to regulate the running of this kind of boats by the lights that we passed, and I made memorandums of the times when I passed them.

Q. How soon after this accident occurred did you change from the Game Cock to the Alert?

Ans. I can't say how soon.

Q. Give me an idea of how soon it was.

Ans. It was about three or four weeks after, or it might have been but two weeks.

Q. And you took no care of the only memorandum which you had of this accident?

160 Ans. I took care enough of it to leave it on board the boat; but after I left it there I never have seen it since.

Q. Have you ever looked for it since?

Ans. No, sir. I have never been on board of the Game Cock since. I supposed I had taken all my things away from the Game Cock and put them in my bag; but the memorandum was not there, and I have never seen it since.

Q. How long have you been master of a vessel?

Ans. I have been master for about 4 years in this employ.

Q. Did you not gather your experience and from your instructions when you were learning this business that it was very important for a captain to have a log-book?

Ans. If a man was making a voyage across the western ocean I should calculate to keep a log-book with days and dates.

Q. But you think it is not the duty of a master to keep a log-book going across this sound?

Ans. We have never had a log at all till last spring, when they gave us written logs to put down the times of passing places like Execution, Norwalk, Stratford, and New Haven, or anything of that kind, or anything that happened on the trip. We leave that log in the office when we make our return-trip.

161 When you were learning your business was it not one of the cardinal rules which you learned that it was your duty to keep a log when you were running a boat?

(Objected to; objection overruled.)

Ans. You want me to say whether it is ruleable to keep a log-book on tug-boats?

Q. Yes, sir.

Ans. No, sir; it is not in New York Harbor; only to keep a memorandum-book of the work you do, and that is for the company. It is not for us to keep a log-book of days and dates, of latitude and longitude, and departure to and from certain points, as it is with ships going to sea.

Q. Is not Long Island Sound an arm of the sea?

Ans. It is a place where we run by landmarks and not by navigation.

A. I understand you to say that it is not customary in tug-boats, in any voyage they take, to keep a log-book.

Ans. I' never has been in any voyages that I have taken; only to keep a memorandum of our work—where we had been and what we towed.

Q. It is not customary for the owners to require it in cases of tug-boats?

Ans. I have never been in boats where we have done anything more than keep a run of our work.

162 Q. But you say that in this trip you did keep a log?

Ans. I set it down more when we got into harbors than when we started. We were in five different harbors during that trip, and I set it all down in my memorandum-book.

Q. What time did you arrive at Cow Bay on the day before this accident happened?

Ans. I should think between 4 and 5 o'clock in the afternoon on the 15th day of March.

Q. From what circumstances do you recollect that that was the hour?

Ans. I judge from the time we left New York, and the time generally take' to get to Cow Bay with three boats, which would be about 6 hours.

Q. How long were you delayed beyond your usual time?

Ans. I was not delayed at all.

Q. Were you not delayed?

Ans. I was not delayed only to take up two boats, and it rather set us ahead than it would to get these boats from Jersey City.

Q. Had you a full tow when you started from New York?

Ans. No, sir.

Q. How many boats do you generally take in a tow of that kind?

Ans. We always carried in the Game Cock four to six boats.

Q. How did you take them?

Ans. We tied them to the hawser, three abreast.

163 Q. Why did you not take a full tow on this occasion?

Ans. I took all I was ordered to take.

Q. Did not you get into Cow Bay a little after noon?

Ans. I don't think I did. I think it was *was* somewhere*s* about 4 or 5 o'clock in the afternoon.

Q. Was it not a little after 12 o'clock when you got there?

Ans. I will not say anything about it.

Q. Will you swear that it was not?

Ans. I will swear that, to the best of my knowledge, it was about 4 or 5 o'clock in the afternoon when I got there.

Q. Don't you remember going into the cabin of the Loughney after you arrived at Cow Bay, and she was anchored there?

Ans. I do not.

Q. Can you not recall it to mind from the fact that the captain was eating his dinner at that time?

Ans. I do not remember anything of the kind. It is very seldom that I go into the cabins of boats anyhow.

Q. And you don't recollect anything of the kind in this instance?

Ans. No, sir.

Q. And you have no memorandum by which to fix the time when you arrived at Cow Bay?

Ans. No, sir; only my memorandum.

164 Q. What kind of weather was there when you went into Cow Bay?

Ans. There was a light air of wind. It was in the month of March, and I concluded the weather was not fit to go out that night. I did not think it was.

165 Q. Will you take a pencil and mark on this chart (chart produced) the course you took from Cow Bay until the time the accident occurred?

Ans. (The witness designating the course on the chart.) We did not go up the bay. We just went in far enough to get out of the wind. We had to go to the west of the Gangway Rocks, until we got clear of them.

Q. Then you have no way to fix positively the time when you got into Cow Bay?

Ans. No way except from memory.

Q. When you got to Cow Bay what anchor did you put down?

Ans. I put down my best anchor.

Q. How many anchors had you?

Ans. Three; two anchors and a kedge.

Q. And you put down your best bower?

Ans. Yes, sir.

Q. How many fathoms of chain did you put out?

Ans. About 15 or 18 fathoms.

Q. And you anchored in about how much water?

Ans. About 3 fathoms and a half.

Q. That left your tug and tow swinging, did it?

Ans. Yes, sir.

Q. After you got your anchor down, how did your head swing?

Ans. I cannot tell you.

Q. Is there any tide in there?

Ans. None to speak of; not where we laid.

166 Q. You anchored clear of the shore, did you?

Ans. O, yes!

Q. Which way was the tide running, if there was any tide at the time you anchored there?

Ans. I think it was about flood-tide, about the last of the flood. We always calculated to go through the gate on the first of the flood.

Q. So that you swung with your head toward the sound?

Ans. We probably would swung that way, though, lying in the bay, there would not probably be wind or tide enough to swing us any way.

Q. What time did you retire that night?

Ans. I believe it was 10 or 11 o'clock.

Q. How was the weather when you retired?

Ans. The weather did not look bad then.

Q. How was it?

Ans. I said it did not look bad. The wind all died away and there was no wind at all at 10 or 11 o'clock.

Q. How was the wind?

Ans. There was no wind at all.

Q. From what point of the compass did it come?

Ans. When there is no wind there can be no point of the compass. It was a dead calm.

Q. Why did you not start out on your trip?

167 Ans. I would not start out. We never calculate to start out until it gets to be about 12 o'clock, for we can generally tell by that time what kind of weather we are going to have the next day.

Q. You say you went to bed about 10 or 11 o'clock?

Ans. Yes, sir.

Q. And you got up when?

Ans. About 3 o'clock. I was called up at 3 o'clock, with steam up and the anchor up.

Q. You do not know what kind of weather there was between when you went to bed and 3 o'clock in the morning?

Ans. No, sir.

Q. What kind of weather was it when you got up?

Ans. It was moderate; no bad weather, and no appearance of bad weather. It was a little hazy, a little overcast to the west.

Q. Do you mean to say that there was no indication that there would be bad weather?

Ans. No, sir, I don't think there was. According to my judgment, I thought we were going to have a pleasant day.

Q. Where was the wind then?

Ans. There was no wind at all; not wind enough to tell which way the wind was.

Q. It was a dead calm?

168 Ans. Yes, sir.

Q. So that if you had gone out on the deck of your vessel and held out your handkerchief you could not have told which way the wind blew?

Ans. A silk handkerchief a breath will blow to one side. I did not hold up my handkerchief.

Q. How did you judge that there would not be any wind?

Ans. As I always do. I judged that there would not be any.

Q. Then do you mean to tell this jury that you cannot now state which way the wind was then?

Ans. I cannot tell this jury whether the wind was north, or south, or east, or west.

Q. After you weighed anchor and got under way, was there no wind then?

Ans. Not a particle; no wind either one way or the other.

Q. It was still a dead calm?

Ans. Yes, sir.

Q. How was the tide when you got under way?

Ans. The tide was ebb; or, at least, I judge that the tide was ebb. I might have found out more than I did by looking at the figures, but I judge that it was ebb because we came into Cow Bay about 4 or 5 o'clock in the afternoon and it was probably about the last of the

169 flood or the first of the ebb when we got in. It was ebb-tide before we got out by Execution, I think; I won't be positive about that, because I have only that down by memory.

Q. I understand you to say that you came in with the end of the flood-tide?

Ans. Well, I think it was about the last of the flood-tide.

Q. And then you had ebb-tide for how long?

Ans. It would be about five hours and a half or 6 hours.

Q. And then you went out at 3 in the morning?

Ans. Somewhere about 3; it might have been slack-water, the first of the ebb or the last of the flood, but I cannot say positively because I cannot say exactly when I arrived in Cow Bay, but the nearest I can come to it is between 4 and 5 o'clock.

Q. When you came out?

Ans. No, sir; when I came in.

Q. But I am not speaking of when you came in, but when you came out.

Ans. It was 3 o'clock when the mate called me up.

Q. Then did you not come out on the flood-tide?

Ans. I cannot tell whether it was flood-tide or slack-water. There was no tide in there to speak of.

170 Q. But you say you went in on the last of the flood, about 4 or

5 o'clock, and that you would have ebb-tide about 6 hours. If you stayed there until 3 o'clock in the morning, that would give you the end of the ebb-tide, so that the flood-tide must have been running 3 or 4 hours before you got to go out the next morning.

Ans. Where we were there was no tide. I would not swear whether it was ebb-tide or slack-water. I have no log nor anything to refer to. It is only my memory that I speak from; and this happened two years ago, and I never expected to be hauled up on the witness-stand for that occasion in the world. I did not ever charge my memory with it.

Q. Did not you hear of this suit in June, 1873, when it was brought up in the State court here?

Ans. I heard of it at that time.

Q. Did not you then expect to be called upon as a witness?

Ans. No, sir; I never thought the thing would come to a trial. The fact is, I never talked to my men about it. Within the last year or two I have not even talked with the men about it.

Q. Were you on deck at the time the Game Cock went out with the tow?

Ans. Yes, sir.

171 Q. At 3 o'clock in the morning?

Ans. Yes, sir.

Q. How do you fix the time?

Ans. Because I know it was 4 o'clock when I went by Execution.

Q. How do you know that?

Ans. I never go by Execution or any trip without putting in down, so as to know how long it will take me to go to the next place.

Q. Where do you put it down?

Ans. In my pilot-house. You will find marks all over it, passed by such a light at such an hour, and when I get to another light I know by the time when I passed it how long I have been on the way, and whether I am going three miles or four miles an hour.

Q. Have you such a mark there on your pilot-house now?

Ans. I presume there is; but the ceiling was painted over lately, and perhaps it was painted out the other day.

Q. When did you look at any mark in your pilot-house?

Ans. I noted the time when we lost that boat that morning, and whenever I passed a light I always marked it down. I know we passed Captain's Island about 6 o'clock on that morning because the sun was just rising, and the sun rises at six o'clock or six o'clock and 15 minutes on the 16th of March, or somewhere along there.

172 Q. How did you know it was 4 o'clock when you passed Execution Light?

Ans. By the clock forward of the wheel.

Q. Do you mean to say that you looked at the clock when you passed Execution light and found that it was 4 o'clock?

Ans. Yes, sir.

Q. How do you recollect that?

Ans. My recollection, I suppose, is like everybody else's.

Q. I suppose it is. Is that your answer?

Ans. Yes, sir.

Q. You have sworn positively that you know it was 4 o'clock when you passed Execution light; when you looked at the clock?

Ans. Yes, sir; and another thing, I met one of our boats right there at that time.

Q. How do you recollect that fact so far back?

Ans. I remember meeting that boat, and when we meet one another

we always note what time we met such a boat at such a place; but the most that I know of it is that I am always positive to remember what time I leave such a light until I get to another; and if I don't put it down it is in my memory, and if I pass Execution at 6 o'clock and Captain's Island at 4 o'clock I know I have come nearly 9 miles with the tow.

Q. I would like you to tell me how it is that you fix your recollection that it was 4 o'clock when you came out and passed Execution light. Have you no memorandum that will help you?

Ans. I have no memorandum, only my head.

Q. Might you not be mistaken, and was it not 5 o'clock?

Ans. We are all liable to be mistaken; but that morning, to the best of my knowledge, it was 4 o'clock. I am positive, almost, it was 4 o'clock, because I could not have got to Captain's Island with that tow under two hours any way, and I know it was 6 o'clock when I got there because the sun was just rising.

Q. When you passed Execution light was there any wind?

Ans. No, sir; at 4 o'clock in the morning there was no wind at all.

Q. Still a dead calm?

Ans. Yes, sir; a calm. I call it a calm when there is no wind blowing to speak of.

Q. Cannot you remember w'ether there was any wind at all, and from what quarter it was coming when you passed Execution light?

Ans. There was no wind. I talked to my mate about it, and he said there was not wind enough to tell which way the wind was.

Q. And you mean to tell this jury that when you passed Execution light you could not tell whether the wind was north or south, or east or west?

Ans. No, sir; I could not.

Q. When you passed Execution Point, was the light out?

Ans. No, sir; it was still burning.

Q. After you get by Execution Point, do you know where Pulpit is?

Ans. Yes, sir.

Q. How was the wind when you got opposite Pulpit?

Ans. There was no wind at all until we got up to Captain's Island and bore about north.

Q. Had you passed any sailing-vessels up to that time?

Ans. There were sailing-vessels in company with us.

Q. Were their sheets drawing?

Ans. There was no wind for them to draw. The vessels were lying around. There were vessels lying at anchor up in Hempstead. I do not recollect of any other vessels being there. When we see vessels becalmed we never pay any attention to them, only to keep clear of them.

Q. Do you remember when you were opposite Hampstead?

Ans. Yes, sir; I remember all about it.

Q. Was it a dead calm there?

Ans. Yes, sir; and a dead calm when we passed Mattinnicoke; there was no wind at all.

Q. And then when Captain's Island bore north after——

Ans. Then it began to breeze up a little.

Q. From what direction?

Ans. West.

Q. When you were examined before in this case, did not you say that when the wind began to breeze up you thought it was coming from the southwest?

Ans. I say so now, and I said so before. I thought the wind was coming from the southwest, and for that reason I said my course toward Stratford.

Q. When the light of Captain's Island bore north from you, was it lighted?

Ans. No, sir; the light was out. It is always put out when the sun rises.

Q. And you saw no light there?

Ans. I saw it all the time until I got there, and then it was put out.

Q. Have you not testified to-day that when the wind commenced to breeze up it was due west?

Ans. Yes, sir.

Q. Will you tell the jury why, when you testified before, you
176 said the wind was southwest, and to-day you say it was west?

Ans. I say that I was under the impression that the wind was coming from the southwest, and, for that reason, I took my course to Stratford.

Q. At what point were you when you thought the wind was from the southwest?

Ans. All the time when I came up I thought, from the looks of the horizon to the southward, that the wind would come that way. I cannot explain my indications about weather. We all have different notions, and we do not always come out right. "Probabilities" does not always tell the truth about the weather.

Q. When you got near Captain's Island a wind began to breeze up?

Ans. Yes, sir.

Q. And that was 6 o'clock; how strong did it blow?

Ans. It was moderate; but it came up in a very few minutes. It was moderate on the start, but in a few minutes I saw vessels coming down the head of the sound, letting everything down by the run.

Q. How long was it after the wind first began to breeze up before this happened?

177 Ans. A gale of wind travels pretty fast.

Q. How long was it?

Ans. I cannot figure on that.

Q. Was it an hour?

Ans. No, sir.

Q. Well, give us some idea of the time.

Ans. I' was probably half an hour from the time the wind first sprung up before it was blowing a good taut breeze.

Q. In that half hour did you make any attempt to drop your boats back?

Ans. No, sir. I did not think it was going to be a squall until I saw the vessels at the head of the sound shortening sail; but after I thought it was going to be breeze of wind, I dropped my boats back.

Q. How far did you go, after you felt the wind, before you concluded to drop your boats back?

Ans. A couple of miles, perhaps.

Q. Did not the bow-line between the Monroe and the Loughney part before you began to put the Monroe back?

Ans. No, sir; it did not part at all. It stranded.

Q. How long before?

Ans. But a few minutes before.

Q. Then you did not attempt to do anything in the way of putting your boats back until that line had stranded?

178 Ans. Yes, sir; we were running a hawser up from our port quarter to the Helen Monroe bow.

Q. Was not that after it stranded?

Ans. I do not know whether it was or not.

Q. What time was it when you began to drop your boats back?

Ans. It was somewheres pretty nearly 7 o'clock.

Q. And this boat was lost about what time?

Ans. Between 8 and 9, somewhere along there.

Q. Will you explain to the jury how it was that from the time this boat dropped away it was possible for the "Loughney" to get opposite Lloyd's Neck before she sunk.

Ans. I want you to understand that I do not know where the exact spot was where the boat sank, and it might have been sunk a mile back of that.

Q. Will you tell this jury how it is that after these boats got to drifting they could, in that time, drift from the place where they got loose to the place where the "Loughney" sank?

Ans. It was blowing very heavy, and there was a very strong sea running that way. We were drifting to the eastward all the time. The spot where I have told you the boat sank is as near as I can come
179 to it. What I judge from is that when I started on again found we could not get up to Oyster Bay, and I shaped my course to Huntingdon.

Q. After the breeze sprung up you still kept on your course, did you not?

Ans. I suppose, at first.

Q. And went about two miles before you began to drop your boats back?

Ans. I suppose it was two miles before we began to drop them back.

Q. Before you commenced to drop your boats back did you head them to the wind at all?

Ans. I did not; I kept right before it.

Q. When you came out of Cow Bay why did you not take the western shore or the northern shore?

Ans. I don't know no western shore.

Q. Do you know the northwestern shore?

Ans. I know the northern shore, and the southern.

Q. Do you know the northwestern shore?

Ans. No, sir; I never heard tell of a northwestern shore in Long Island Sound.

Q. Is there any northwestern shore between Captain's Island and Cow Bay?

Ans. I do not know what you call the northwestern shore.

Q. What can you call it?

180 Ans. You might call it west by north; when you get into the head of the sound then the sound narrows up.

Q. Would it not head the same way?

Ans. No, sir. If you start from Lloyd's Neck and steer northwest, then you reach what you call the northwestern shore.

Q. Why did you not take the north shore when you came out of Cow Bay?

Ans. Because I did not think we were going to have any bad weather at all. I wanted to cut straight across for Stratford so that in case the wind did come from the southward and westward I had a lee shore.

Q. What made you suppose it would come from the southward and westward?

Ans. I had a kind of an idea, or opinion, as we all have; I simply thought so.

Q. What difference in time would it have taken if you had gone from Cow Bay across to the north shore and took the north shore up to Hampstead Point?

Ans. If the wind had been to the northward and northwest I would have taken it.

181 Q. What difference of time would it have made in getting to that point? You came out of Cow Bay and took your course directly for Stratford Point. If you had gone over to the north shore, and followed up the north shore, what difference of time would it have made?

Ans. Probably an hour difference in getting to Stratford.

Q. Did you not say in your testimony before, that you would not be particular about the time you passed Execution light, and that you thought it was about 4 o'clock?

Ans. That is what I say now. I judge more from the time I arrived at Captain's Island, because there I know it was just 6 o'clock, and we calculated to run that distance in about two hours.

Q. Is there any swell in the sound in calm weather?

Ans. That is according to how long it has been calm.

Q. You know that day before this the wind was strong from the southwest?

Ans. No, sir.

Q. From the southeast?

Ans. No, sir; it was not. The wind was light from the eastward; that is, it might have been strong. I was not there, but there was no sea when we went into Cow Bay; and if there had been any strong wind there would have been a sea in there.

182 Q. Did you meet with any swell after you left Cow Bay?

Ans. No, sir; you cannot call it any swell. We were going along as well as I ever went on Long Island Sound in my life, up to the time we lost the barge.

Q. When you lost the barge, how far were you from the Long Island shore?

Ans. A mile and a half off Lloyd's Neck.

Q. And the sound is how wide there?

Ans. I suppose from Lloyd's Neck over to Shippen's is about 8 miles, or along there. I have not measured it, but I suppose the distance is about 8 miles. I should think the distance is about 5 miles across from Captain's Island to Lloyd's Neck, and where the sound widens out I should think it is between 7 & 8 miles.

Q. Did you see Capt. Hope when you started out of Cow Bay?

Ans. I never saw Capt. Hope that morning that I remember. I saw his deck-hand, and I helped him to get up his anchor.

Q. Will you tell this jury what the difference was, as far as the weather is concerned, between when you went into Cow Bay and when you came out?

Ans. When I went in there the wind was light to the eastward, and when I came out there was no wind at all.

183 Q. Then you ventured out without knowing how the wind was?

Ans. I went out as I always do; I judged that we were going to have good weather.

Q. And you had nothing to judge from?

Ans. Only as I always have from the looks of the horizon. I have laid in Cow Bay 7 days to get rid of going out in a gale of wind.

Q. And you thought that cloudy weather in it, the sky overcast, was not an indication of bad weather?

Ans. I do not think so.

Q. Will you tell me what indications you had that you were going to have clear weather?

Ans. I cannot tell you any more than my judgment, which told me that the weather was going to be good.

Q. What did you judge from?

Ans. I judged from the looks of the horizon.

Q. You have said that it was overcast and cloudy?

Ans. I said that it was overcast to the westward, but not to the eastward.

Q. And that did not denote that there was any wind coming from that quarter?

Ans. I don't think it did. I thought we were going to have a fine day, or I would not have started.

Q. You have said that the hawser slipped from the bow-cleet of the Loughney?

184 Ans. Yes, sir.

Q. How do you know that?

Ans. I saw it slip.

Q. How was it fastened?

Ans. I could not tell how it was fastened, or anything at all about it.

Q. At the time it slipped, was the boat jumping a good deal?

Ans. The steamboat was jumping.

Q. Not the Loughney?

Ans. Not a great deal. I have seen boats jumping a great deal worse alongside of the steamboat.

Q. Was it or was it not jumping a great deal?

Ans. What do you call "jumping?"

Q. You were there and you could tell better then I how much sea there was on.

Ans. There was a motion to her the same as there always is in a sea.

Q. And the tug was jumping at the time?

Ans. They were all in motion, up and down.

Q. And the Freeman was alongside of her, pounding her?

Ans. There was no pounding about it.

Q. Well, chafing her?

Ans. Yes, sir; they were chafing.

Q. And in that condition this hawser slipped off?

Ans. No, sir; it didn't slip off until we went ahead.

Q. Before the line which slipped off did slip off, how was it fastened to the tug?

185 Ans. It was fastened to the bow of the Loughney, and aft on the tug to pair of bit's, and when I went forward and got a strain on it, it slipped off.

Q. Before this boat got adrift, the mate had the wheel?

Ans. The mate took the wheel after the boats got adrift.

Q. You were not in the wheel-house, were you?

Ans. No, sir; I saw him standing at the wheel.

Q. Was anybody else with him?

Ans. No, sir.

Q. You are quite positive of that, are you?

Ans. Yes, sir.

Q. How are you positive of that?

Ans. Because I had nobody else there.

Q. The last time when you passed the hawser, did he have the wheel?
Ans. Yes, sir.
Q. Which hatch was it that you speak of which you say you fastened down?
Ans. I think it was the aft hatch. I remember particularly about the hatch, because the captain had the hatch up.
Q. Had it been fastened down before?
Ans. I do not know. I simply saw that the hatch was off when I boarded her, and I put it down.
Q. Was there coal on deck?
186 Ans. There were coal on deck, but it did not last but a few moments.
Q. Was it not when this coal was there the hatch was off?
Ans. I do not know anything about that, but I saw the captain take the hatch up and get a new line out to run it across the deck, when the other line parted.
Q. At the time that the captain of the Loughney and his man jumped aboard your tug, your tug was alongside?
Ans. That was the only time he could have got aboard.
Q. And that was after you had gone up and made the turn?
Ans. No, sir; that was before we left the Loughney and the Freeman. When we went ahead we made the hawser fast, and the next thing I saw, when we got ahead of them, there was no one on board the boat at all.
Q. Do you mean to say the captain of the Loughney and his man left his boat before there was any disaster?
Ans. I mean to say they were both on the steamboat when we went a head with the hawser.
Q. That was after the lines had parted?
Ans. It was after some of the lines had parted.
Q. Was it not after the canal-boat got into the trough of the sea?
187 Ans. No, sir; it was not. Both of them jumped aboard. I did not see them when they jumped aboard, understand, but I saw that when I looked at the boats when they had dropped back, and the steamboat went ahead, there was nobody on board of them at all, only one boy on the Freeman.
Q. After the boats dropped back, then you saw that there was nobody there?
Ans. Yes, sir.
Q. And that was the only time they could have got on your boat?
Ans. Yes, sir.
Q. When you went to the Loughney you took your life-boat?
Ans. I took my small-boat.
Q. And when you came from the Loughney you got in your yawl-boat?
Ans. I did when the Loughney went down.
Q. When you left the Loughney your yawl-boat was there to take you off?
Ans. Yes, sir.
Q. When that line was cut which led across the stern of the Freeman to the aft bits on your tug, it were taut, was it not?
Ans. I don't know about that and could not swear to it.
Q. When it was cut it flew off?
Ans. The line was cut and passed right forward across the Loughney.
188 Q. Which end of it?

A. The end which was cut.

Q. Who cut it?

Ans. One of my men passed it over to the Loughney, and my impression is that the deck-hand on the Loughney and the boy on the Freeman made the hawser fast to the forward cleet on the Loughney's bow.

Q. Was that the line that slipped off?

Ans. That was the line that slipped off.

Q. After it was made fast?

Ans. Yes, sir.

Q. And that was not made fast until after it was cut off?

Ans. No, sir.

Re-examined by M'r Geo. Biddle:

Q. What was the name of the other boat of the line you met in the morning at 4 o'clock?

Ans. The Alert.

Q. Had she any boats in tow?

Ans. Yes, sir.

Q. And them two men left their boat, the Loughney, before the hawser became taut and slipped?

Ans. Yes, sir; from the time that we left go of the breast-lines and everything and went ahead, the first thing I saw was the boat and nobody on board of her and the hawser slipped off.

189 Q. Then I understand that these two men wer' actually off their own boat before the hawser slipped?

Ans. I did not see them on their own boat, and then I saw them on my boat.

Q. Where must they have been if they were not on their own boat?

Ans. They must have been on the steamboat.

Q. How many boats had the Alert with her that morning?

Ans. I could not tell. She had some light boats; I could not tell how many. We met her there at the head of the sound, abreast of Execution.

Recross-examined by M'r Coulston:

Q. You do not know whether the captain of the Laughney and his man was on board the steamboat when this hawser slipped off?

Ans. I know they were not on board of their own boat when the hawser slipped off.

190 ARTHUR MELLEN sworn, and examined by M'r A. S. Biddle:

Q. What is your age?

Ans. 53.

Q. And your occupation?

Ans. Steamboat-pilot and coaster.

Q. What was your employment in March, 1873?

Ans. I was mate on board the tug Game Cock.

Q. Do you recollect leaving New York on the morning of the 15th of March, 1873?

Ans. I don't recollect what time of day it was.

Q. Do you remember leaving the harbor of Jersey City on that day?

Ans. Yes, sir.

Q. Will you begin and tell us all that occurred from your leaving Jersey City until the time of the sinking of the Loughney?

Ans. I remember the sinking, but I forgot what time of the day it was when we left Jersey City. I have an idea it was about 9 o'clock in the

morning. We came along up with only one boat, and *under*took another boat that belonged to the same line up at Green Point, and she gave us two more boats, the Helen Monroe and the Freeman, *to* proceeded up to Cow Bay and went in there and anchored.

191 Q. When did you start the next day?

Ans. We went away the next morning. It was in the neighborhood of 3 o'clock when we began to bear her anchor up, and I think it took us about half an hour to get up to Sand's Point. Then the weather was calm, was pretty calm, and it was rather cloudy and hazey, something like it is now outdoors. We had no wind at the time, and when we got to Sand's Point, as I had been up all night, I went to bed. The sun was about half an hour high when I got up. It was before daylight when we passed Sand Point, and I went to bed; and the sun was up some little ways when I got up. It was blowing quite a breeze then, nothing very heavy, but what we could call a good stiff breeze. I started to go aft on the starboard side, and the captain says, "We will have to drop these boats back." The boat that was on the starboard side the Loughney's spring-line, what we call the tow-line, parted, and we went to hurrying and dropping them past as fast as possible. We dropped the Monroe first, and the deck-hand, Henry Ryan, and myself commenced in the starboard side to drop the boats. The steward helped to drop the Monroe back on the port side first, and in the mean time the spring-line parted or slipped, or something, and they went to get another line out.

192 By M'r Geo. Biddle:

Q. Let me understand, how far was the Monroe back at this time; how far had she paid out her hawser?

Ans. I should say about 10 fathoms astern.

Q. Was she paying it out all the time?

Ans. Yes, sir.

Q. Where were the Loughney and the Freeman?

Ans. They were alongside, but they dropped back a little by slipping this line.

Q. Did you see this line slip?

Ans. Yes, sir; I did.

Q. What line was that?

Ans. It was the Loughney's tow-line that was made fast from the aft cleet on the port side of the starboard bow forward of the house, and then we went to drop her back as soon as we could, we took the starboard line, which was made fast to the breast-line, and undertook to get it off, and they had to cut it; and in the mean time the two boats were on the starboard side, and then I forget about what was done until Captain Robert told me to go take the wheel.

Q. Had anything occurred meanwhile?

193 Ans. Not that I know of, any more than that after I had been in the pilot-house a little while the captain of the Loughney came in there, and he was bleeding. I think it was from his wrist, or somewhere around his hand. I know he bled in the pilot-house considerable. Then the boats had got away somehow or another; how it was done, I don't know. We backed up and tried to put a line to them. The captain said to me to go ahead and take a turn, and try to get around to them.

Q. Where was the captain then?

Ans. He was about leaving in the boat to go aboard of them. I rounded too the first time, and I think they got a hawser aboard to her,

but I am not positive. I had considerable to look at and had to go ahead and keep the boats from pulling away. Finally we missed them and I had to turn the second time, and the second time we got them. In the meanwhile the Helen Monroe came out, and the boat that sunk hit the Helen Monroe's bow, and we got hold of the other boat then and the captain told me to go on. Then we had got up so there we could not get into Oyster Bay Harbor without going into the trough of the sea. I should say we were then a mile or a mile and a half off Lloyd Neck, and it bore about E. S. E. from where the Loughney went down.

194 We went on Lloyd's Neck. The Helen Monroe had a long hawser and the other boat that we towed around them was about 35 fathoms. We went around and went into Lloyd's Harbor. That is about the occurrence as nearly as I can tell it.

By M'r A. S. Biddle:

Q. Did the master of the Helen Monroe remain on board of his own vessel?

Ans. Yes, sir.

Q. Did the captain and bowsman of the Loughney go back to their own boat after coming aboard of you?

Ans. I did not see them go back. They were in the pilot-house with me about an hour, I could say from ¾ of an hour to an hour.

Q. Did they come on board of your boat before your captain went on board of the Loughney?

Ans. I could not say about that. I did not see them come on board. The first I saw of them on board was when they came into the pilot-house, after I took hold of the wheel.

Q. How long did it take you to make one other turn around?

Ans. From the time we started to go around from heading from the westward until we made a complete circle and came back to the position where we started, I should say it took from 15 to 20 minutes to

195 do it. You cannot handle a boat when the wind is blowing a strong breeze quite as soon as you can when it is calm; it won't turn as quick.

Cross-examined by M'r Coulston:

Q. Was the pilot of the Loughney in the pilot-house?

Ans. They were both there; the captain stayed with me quite a spell.

Q. Did not M'r Brennon, the pilot of the Loughney, take the wheel?

Ans. I do not know. I might have asked him to seady it a minute while I picked up a stool that was upsetting at the time, or something of the kind.

Q. You have never been examined before in this case?

Ans. I don't know anything about it, and I didn't think of such a thing.

Q. Are you employed by the Transportation Company now?

Ans. Not now.

Q. You were employed by them?

Ans. I was at the time.

Q. Where are you now?

Ans. Pilot on board the General Sedgewick, running from New York to Glen Cove.

Q. You live in New York?

Ans. In Brooklyn.

Q. Do you recollect when the vessel got under way at Cow Bay?

Ans. I am not positive.

196 Q. Did you keep a log?

Ans. No, sir.

Q. The mate usually keep' the log, does he not?

Ans. I never knew it on board of a tug-boat.

Q. You do it now?

Ans. We do not do it. The passenger-boats—the large boats—the Hartford and Fall River boats, keeps a log.

Q. And you never knew a tug-boat on the sound to keep a log?

Ans. I never did; only the earnings.

Q. And you kept no log on this trip?

Ans. No, sir; I did not.

Q. Did you make any memorandum of the dates and times?

Ans. All I recollect is, it was Sunday in March that we came out of Cow Bay.

Q. When was your attention first directed to this case since its occurrence?

Ans. When Capt. Fletcher came over; I think it was a week ago. Yesterday, or the day before, he came over aboard the boat.

Q. And you had not heard of it from the time it occurred up to this time?

Ans. No more than any other lawsuit.

Q. Did you talk of it?

Ans. No more than Capt. Fletcher and I might have talked about suit when we lost that boat.

Q. When did he first speak to you?

197 Ans. I don't know; I used to go over to Jersey City sometimes.

Q. Have you talked it over frequently since the occurrence?

Ans. Not to amount to anything.

Q. You had the first and most important conversation about a week ago?

Ans. He went over and said they wanted me to go on in this case.

Q. Who first asked you about 3 o'clock as the time of getting under way in Cow Bay?

Ans. I forget about that.

Q. How do you fix the time?

Ans. I fix the time because it was not quite daylight when we went by Sand's Point.

Q. Was it very cloudy?

Ans. Pretty well toward daylight.

Q. If it was pretty nearly daylight when you passed Sand's Point, and it took you half an hour to go out to Sand's Point, it must have been later than 3 o'clock when you started?

Ans. It takes some little time to get steam up and get your anchor up.

Q. How long would it take?

Ans. About ¾ of an hour, generally.

Q. And it took you half an hour after you got under way to go to Sand's Point?

Ans. I should think it would.

Q. And it took you ¾ of an hour after 3 o'clock to get under way?

Ans. Somewheres in that neighborhood.

198 Q. Then that was an hour and a quarter after 3 o'clock?

Ans. Yes, sir; somewhere near about there.

Q. Now, do you say that it was near daylight at a quarter past four on the 15th of March?

Ans. It was pretty near daylight. I recollect it was cloudy.

Q. The lights in the light-houses are not put out until sunrise.

Ans. They are not generally; sometimes they burn later.

Q. If the light on Sand's Point was put out at 11 minutes past 6 that morning, do you not think you might be mistaken?

Ans. I might be.

Q. Have not you and Captain Fletcher talked about this 3 o'clock?

Ans. No more than we say we reckon it would be 3 o'clock.

Q. You and he have talked about it?

Ans. Yes, sir.

Q. Did you not fix your recollection by what M'r Fletcher said?

Ans. I did not.

Q. Then your recollection is fixed by your own knowledge?

Ans. Yes, sir.

Q. Might it not have been 4 or half past 4 o'clock when you got under way to go out?

Ans. It might have been.

Q. Have you a positive recollection about the wind; is your
199 recollection as positive about that as it is about the time you passed Sand's Point?

Ans. I have a positive recollection about that, because, generally speaking, when we reach Sand's Point we calculate how the wind is.

Q. But how do you fix your recollection as to the wind?

Ans. When we got under way there was no wind; I should say there was no air; just about an air; a very little air.

Q. Did you make any memorandum of that?

Ans. No more than in my mind.

Q. After you got out and passed Execution light, how was the wind?

Ans. I went to bed before we got there.

Q. At what point did you go to bed?

Ans. Just to the west of Sand's Point buoy.

Q. When you went to bed how was the wind?

Ans. There was no wind whatever.

Q. Was it still a little from the south, or had that gone away?

Ans. It was the same as when we started. You could perceive there was an air, and that is all.

Q. When you got up and went on deck, how did Captain's Island bear from you?

Ans. I should say about N. N. by W. of us.

200 Q. Was there any air when you got up?

Ans. Where was quite a breeze to the westward, about west.

Q. If Captain's Island bore about N. W. from you, please fix on the chart, by making a circle, where you went.

Ans. As nearly as I can recollect, we went above this, (indicating the direction on the chart.)

Q. How much wind was there when you got up?

Ans. There was a pretty good wholesale breeze; what you might call a pretty good wholesale breeze for a light vessel.

Q. Did you continue on your course after you got up?

Ans. Not long; in 10 or 15 minutes we began to drop the boats astern.

Q. When you began to drop the boats astern, where do you say Captain's Island light bore from you; had you passed it?

Ans. Yes, sir.

Q. Where was this barge lost?

Ans. I should say about 2 miles to the west of Lloyd's Neck.

Q. Off Sand's Point?

Ans. Off Cold Spring Harbor.

Q. Then it was not Lloyd's Neck?

Ans. We didn't get to Lloyd's Neck.

Q. And how far from shore?

Ans. I should say about 2 miles from the shore on Lloyd's Neck Point.

Q. Due west, or to the northward of west off Lloyd's Neck?

201 Ans. I should say it was above W. N. W., or somewheres thereabouts. I should think Lloyd's Neck Point, if I should judge, bore about E. S. E. from us.

Q. Where was the captain when you came on deck?

Ans. He was in the pilot-house.

Q. Who had the wheel?

Ans. I don't know whether he had the wheel or not; he was in the pilot-house.

Q. Did you go there, too?

Ans. Yes, sir; I went forward.

Q. Did he see you; did you report to him?

Ans. I went up forward.

202 PERRY BURNS sworn and examined by M'r Geo. Biddle:

Q. What is your business?

Ans. I am a boatman.

Q. Had you a boat in tow of the Game Cock on the 15th and 16th of March, 1873?

Ans. Yes, sir.

Q. Do you recollect when the tow left Jersey City?

Ans. I recollect they left on the 15th, in the morning, but I do not recollect exactly the hour.

Q. Do you recollect where the boats stopped that night?

Ans. Cow Bay.

Q. What time did they get there?

Ans. I should say it was along between 4 and 5 o'clock in the afternoon.

Q. What was the name of your boat?

Ans. The Helen Monroe.

Q. Where were you taken in tow?

Ans. In Jersey City.

Q. Was there any other boat on?

Ans. Yes, sir; there was this boat, Loughney, and the F. B. Freeman.

Q. Who was on your boat?

Ans. Me and my wife.

Q. You were the only hand on your boat?

Ans. I was the only hand on the boat.

203 Q. Do you recollect about what time they started to weigh anchor the next morning?

Ans. As near as I can recollect, I should say it was about 4 o'clock when we first started out.

Q. You mean to say that the boats were put in motion about 4 o'clock?

Ans. We started about 4 o'clock. I suppose when I say we started that means when we were in motion.

Q. Did you meet any other boat?

Ans. When we went out of the harbor into the sound there was a steamer went by, and they said it was the Alert.

Q. Had she any boats in tow?

Ans. Yes, sir.

Q. Do you know what time they passed Sand's Point?

Ans. I do not; I do not know the names of the places down there.

Q. How was the weather then?

Ans. The weather was calm.

Q. If the light on Sand's Point was put out at 11 minutes past 6 that morning, do you not think you might be mistaken?

Ans. I might be.

Q. Have not you and Captain Fletcher talked about this 3 o'clock?

Ans. No more than we say we reckon it would be 3 o'clock.

Q. You and he have talked about it?

Ans. Yes, sir.

Q. Did you not fix your recollection by what M'r Fletcher said?

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Ans. I have a positive recollection about that, because, generally speaking, when we reach Sand's Point we calculate how the wind is.

Q. But how do you fix your recollection as to the wind?

Ans. When we got under way there was no wind; I should say there was no air; just about an air; a very little air.

Q. Did you make any memorandum of that?

Ans. No more than in my mind.

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Ans. I went to bed before we got there.

Q. At what point did you go to bed?

Ans. Just to the west of Sand's Point buoy.

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Ans. There was a pretty good wholesale breeze; what you might call a pretty good wholesale breeze for a light vessel.

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Ans. Not long; in 10 or 15 minutes we began to drop the boats astern.

Q. When you began to drop the boats astern, where do you say Captain's Island light bore from you; had you passed it?

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Q. What time did they get there?

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Q. What was the name of your boat?

Ans. The Helen Monroe.

Q. Where were you taken in tow?

Ans. In Jersey City.

Q. Was there any other boat on?

Ans. Yes, sir; there was this boat, Loughney, and the F. B. Freeman.

Q. Who was on your boat?

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Ans. I was the only hand on the boat.

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Q. Did you meet any other boat?

Ans. When we went out of the harbor into the sound there was a steamer went by, and they said it was the Alert.

Q. Had she any boats in tow?

Ans. Yes, sir.

Q. Do you know what time they passed Sand's Point?

Ans. I do not; I do not know the names of the places down there.

Q. How was the weather then?

Ans. The weather was calm.

Q. Quite calm?

Ans. Yes, sir.

Q. Tell what happened after you got out.

Ans. After we got out in the sound it was all right enough, and the weather was calm for quite a while, I don't know how long, and Capt. Fletcher said to me, "It begins to look a little bad, and if it commence to blow you will have to drop your boats astern." I said, "I
204 have not had my breakfast yet," and he says, "Go down and eat your breakfast, and if I want you I will call you." I went down to eat my breakfast, and while I was eating I heard some one holler that the line had parted on the other side. I came up and Capt. Fletcher said, "We will have to drop these boats back, and be quick about it."

Q. How was the weather then?

Ans. It was commencing to blow then, and he said it would be worse than it was.

Q. How long had it commenced to blow?

Ans. When I went down to eat my breakfast it was calm, and when I came up it was blowing. I cast off my stern-line and spring-line. I had a breast-line and bow-line, and I told the steward, on deck, to chop off the last line, and he chopped it off and then gave me a hawser. I fastened it to the two bit's forward, and to the middle cleet. I went to the tiller and sheered the boat out a little clear of the tug, let her drop back, and sat down on my cabin. She dropped back slowly. What was going on at this time on the other side I don't know a great deal about. The first thing I saw on the other side, I saw the boats
205 coming back, and I saw two men jump from the Loughney to the tug. I don't know whether the captain or the deck hand jumped first, but they were close on each other's heels. Shortly after they had got off, and the Loughney had got clear of the tug's stern, I saw the lines coming off.

Q. You mean the hawser attached to the Loughney's bow?

Ans. Yes, sir.

Q. Was or was not that hawser which you speak of stretched very tight before it slipped off?

Ans. I don't think there was a very heavy strain on it when it slipped off.

Q. Could you see that very clearly?

Ans. There was nothing between it and me when the hawser slipped off. My boat was back at the clear place, so that there was nothing between the body of the Loughney and me.

Q. What men were those who jumped off?

Ans. The men who belonged on the Loughney.

Q. Did you know which was captain?

Ans. I did not at that time.

Q. Do you know them now?

Ans. I have seen them since, and I think one of them, M'r Hope, is the gentleman sitting here now.

Q. Were they the two men on the Loughney?

206 Ans. Yes, sir; they jumped off.

Q. Was there any danger then on board the Loughney?

Ans. I did not consider there was any danger to my life, or I would not have gone back to my boat. I am a little afraid of my life, and if I had thought there was danger I would not have gone back.

Q. After the hawser slipped what occurred?

Ans. In casting the two boats loose from each other they cast off all the lines before they dropped back, and run a spring-line from the inside

boat to the outside boat—from the Loughney to the Freeman, or the Freeman to the Loughney.

Q. Were those two boats then loose from the tug itself?

Ans. They were loose from the tug then.

Q. Was there any one on board of the Loughney?

Ans. No, sir; until the young man from the Freeman jumped over on her, and when he jumped over they put a line on her, and in shortening the line over and straightening it, it caught on the top of the pump, and in getting it off it struck this young fellow on the legs and crippled him.

Q. After the first hawser slipped, what did they do?

207 Q. The boats dropped back and one got into the other's side and they commenced pounding pretty heav'ly.

Q. Could these boats been prevented if the men belonging to the Loughney had remained in their places?

Ans. It was only because of this line, and if there had been some one there to cast off this line they would not have been pounded; they would have been parted.

Q. You mean the line which they had forgotten to slip off?

Ans. I suppose so.

Q. Are you a professional boatman?

Ans. Yes, sir.

Q. What went on after the hawser slipped?

Ans. The boats dropped back.

Q. How did the tug get back again to the place where the boats were before it managed to get this second hawser?

Ans. The tug at this time was not far away from the boats, and the first thing I knew I saw Capt. Fletcher getting in a small boat and an'ther man with him and hawser. I am not certain but their deck-hand was with him. I saw him start, and was under the impression that he got there with the hawser. I do not know now whether he did or not.

Q. Did you see him on board the Loughney?

208 Ans. I did.

Q. What did you see him do?

Ans. I seen him sound the pumps and put on one hatch.

Q. Do you recollect distinctly seeing him put on that hatch?

Ans. Yes, sir.

Q. What occurred after he got aboard of the Loughney?

Ans. He sounded the water.

Q. What after he did that?

Ans. I don't recollect. He travelled up and down the deck, and I heard him hollowing to look out for swells as they came over the deck.

Q. Did he or did he not get hold of the hawser from the tug-boat?

Ans. He had a hawser in the small boat, but while he got it on the Loughney or not I do not know.

Q. Did he get one on?

Ans. He got one on the Freeman.

Q. What became of it?

Ans. They were trying to bring up the boats, and it got across the iron stern of the Freeman and was cut.

Q. In what boat was Capt. Fletcher at this time when the line was cut?

Ans. I don't know which he went back to the steamboat before the line was cut, or whether he was on them boats at that time.

Q Did he go back to the steamboat finally?

Ans. He did.

Q. Quite calm?

Ans. Yes, sir.

Q. Tell what happened after you got out.

Ans. After we got out in the sound it was all right enough, and the weather was calm for quite a while, I don't know how long, and Capt. Fletcher said to me, "It begins to look a little bad, and if it commence to blow you will have to drop your boats astern." I said, "I
204 have not had my breakfast yet," and he says, "Go down and eat your breakfast, and if I want you I will call you." I went down to eat my breakfast, and while I was eating I heard some one holler that the line had parted on the other side. I came up and Capt. Fletcher said, "We will have to drop these boats back, and be quick about it."

Q. How was the weather then?

Ans. It was commencing to blow then, and he said it would be worse than it was.

Q. How long had it commenced to blow?

Ans. When I went down to eat my breakfast it was calm, and when I came up it was blowing. I cast off my stern-line and spring-line. I had a breast-line and bow-line, and I told the steward, on deck, to chop off the last line, and he chopped it off and then gave me a hawser. I fastened it to the two bit's forward, and to the middle cleet. I went to the tiller and sheered the boat out a little clear of the tug, let her drop back, and sat down on my cabin. She dropped back slowly. What was going on at this time on the other side I don't know a great deal about. The first thing I saw on the other side, I saw the boats
205 coming back, and I saw two men jump from the Loughney to the tug. I don't know whether the captain or the deck hand jumped first, but they were close on each other's heels. Shortly after they had got off, and the Loughney had got clear of the tug's stern, I saw the lines coming off.

Q. You mean the hawser attached to the Loughney's bow?

Ans. Yes, sir.

Q. Was or was not that hawser which you speak of stretched very tight before it slipped off?

Ans. I don't think there was a verry heavy strain on it when it slipped off.

Q. Could you see that very clearly?

Ans. There was nothing between it and me when the hawser slipped off. My boat was back at the clear place, so that there was nothing between the body of the Loughney and me.

Q. What men were those who jumped off?

Ans. The men who belonged on the Loughney.

Q. Did you know which was captain?

Ans. I did not at that time.

Q. Do you know them now?

Ans. I have seen them since, and I think one of them, M'r Hope, is the gentleman sitting here now.

Q. Were they the two men on the Loughney?

206 Ans. Yes, sir; they jumped off.

Q. Was there any danger then on board the Loughney?

Ans. I did not consider there was any danger to my life, or I would not have gone back to my boat. I am a little afraid of my life, and if I had thought there was danger I would not have gone back.

Q. After the hawser slipped what occurred?

Ans. In casting the two boats loose from each other they cast off all the lines before they dropped back, and run a spring-line from the inside

boat to the outside boat—from the Loughney to the Freeman, or the Freeman to the Loughney.

Q. Were those two boats then loose from the tug itself?

Ans. They were loose from the tug then.

Q. Was there any one on board of the Loughney?

Ans. No, sir; until the young man from the Freeman jumped over on her, and when he jumped over they put a line on her, and in shortening the line over and straightening it, it caught on the top of the pump, and in getting it off it struck this young fellow on the legs and crippled him.

Q. After the first hawser slipped, what did they do?

207 Q. The boats dropped back and one got into the other's side and they commenced pounding pretty heav'ly.

Q. Could these boats been prevented if the men belonging to the Loughney had remained in their places?

Ans. It was only because of this line, and if there had been some one there to cast off this line they would not have been pounded; they would have been parted.

Q. You mean the line which they had forgotten to slip off?

Ans. I suppose so.

Q. Are you a professional boatman?

Ans. Yes, sir.

Q. What went on after the hawser slipped?

Ans. The boats dropped back.

Q. How did the tug get back again to the place where the boats were before it managed to get this second hawser?

Ans. The tug at this time was not far away from the boats, and the first thing I knew I saw Capt. Fletcher getting in a small boat and an'ther man with him and hawser. I am not certain but their deck-hand was with him. I saw him start, and was under the impression that he got there with the hawser. I do not know now whether he did or not.

Q. Did you see him on board the Loughney?

208 Ans. I did.

Q. What did you see him do?

Ans. I seen him sound the pumps and put on one hatch.

Q. Do you recollect distinctly seeing him put on that hatch?

Ans. Yes, sir.

Q. What occurred after he got aboard of the Loughney?

Ans. He sounded the water.

Q. What after he did that?

Ans. I don't recollect. He travelled up and down the deck, and I heard him hollowing to look out for swells as they came over the deck.

Q. Did he or did he not get hold of the hawser from the tug-boat?

Ans. He had a hawser in the small boat, but while he got it on the Loughney or not I do not know.

Q. Did he get one on?

Ans. He got one on the Freeman.

Q. What became of it?

Ans. They were trying to bring up the boats, and it got across the iron stern of the Freeman and was cut.

Q. In what boat was Capt. Fletcher at this time when the line was cut?

Ans. I don't know which he went back to the steamboat before the line was cut, or whether he was on them boats at that time.

Q. Did he go back to the steamboat finally?

Ans. He did.

209 Q. Do you know how he got back?

Ans. I don't know. I think he went back in the small boat.

Q. Did you see the Loughney sink?

Ans. I did.

Q. To whose negligence or fault do you attribute the loss of the Loughney?

Ans. I think it was the negligence of the men in jumping off their boat and not casting their line loose.

Q. What o'clock was this sinking?

Ans. I should think it was between 7 and 8 o'clock; I won't be certain of the time.

Q. How long was it between the time that you were called up from eating your breakfast to cast your boat back and the time that the Loughney actually sunk?

Ans. I should think it was between one and two hours.

Q. Where did you go after the Loughney sunk?

Ans. We went down along the Long Island shore.

Q. Into a harbor?

Ans. Yes, sir.

Q. When did you get there?

Ans. We got there before dinner.

Q. Did you see Capt. Hope afterwards?

Ans. Yes, sir; I seen him, with his hand tied up, on the deck.

Q. Were you *no* board the tug?

210 Ans. I went on board the tug after we anchored.

Q. Did any circumstance take place between you and Capt. Hope, or did he say anything in your presence?

Ans. Yes, sir.

Q. What?

Ans. He said he was sorry for the loss, that it left him without a dollar, or something to that effect. I made the remark that everything was done to save his boat that could be done, and he said yes, and he could blame himself for not having his boat insured; that his insurance ran out that day about noon, or something to that effect; that about noon his insurance ran out.

Q. What *what* was the weather when you went down to breakfast?

Ans. The weather looked good enough to me. I didn't see anything alarming about it, but the captain said he thought it would blow, but I should go down to my breakfast, and if it would blow he would call me.

Q. And the next thing you were called from your breakfast?

Ans. Yes, sir.

Q. Was that any very short interval of time?

Ans. It was.

Q. Do you know what hour it was?

Ans. It was between 7 & 8 o'clock, I should judge. I cannot

211 recollect; it was quite a while ago.

Q. Have you stated fully the conversation that took place between you and M'r Hope, after you got on board the tug at Lloyd's Neck?

Ans. We might have had more words. He said he *a*ught to have had his boat insured, and I told him that Capt. Fletcher had done more than one man in a hundred would have done; and he said that Capt. Fletcher had done what he would not have done; that he would not have gone back to the boat as Capt. Fletcher had done for a pretty good sum of money. I do not know what it was. I told him, if he went

on shore, to be careful, as he might meet some fellows, who, when tight, as it was Paddy's day, in a jokeing kind of a way.

Q. When you went from Lloyd's Neck where did you go?

Ans. To Bridgeport.

Q. Did you and the tug-boat get safe to Bridgeport?

Ans. Yes, sir; nothing occurred in the passage from Lloyd's Neck to Bridgeport.

Q. Do you recollect about time you got up in the morning at Cow Bay?

Ans. I don't recollect exactly, but I know it was quite a while before daylight.

212 Q. Did you hear any conversation take place between the captain and M'r Hope that morning?

Ans. No, sir; I didn't see M'r Hope that morning.

Q. You did not see him?

Ans. Not that I recollect of.

Q. Did you or did you not hear any one make any opposition to Capt. Fletcher about going out that morning before you left Cow Bay?

Ans. No, sir; I did not.

Q. What did you say the weather was?

Ans. The weather was fine.

Cross-examined by M'r Coulston:

Q. You say you do not recollect seeing Capt. Hope that morning?

Ans. I do not recollect.

Q. You have no positive recollection about it?

Ans. I have not.

Q. You may have seen him?

Ans. Yes, sir; but I do not recollect seeing him that morning.

Q. You kept no memorandum of this occurrence, did you?

Ans. No, sir.

Q. When were you first asked to be a witness here?

Ans. I received a letter last winter.

Q. Where your testimony taken in New York?

213 Ans. Yes, sir.

Q. You stated then that you did not know what time you came out of Cow Bay, did you not; that it was early in the morning?

Ans. Just as I state now; it was early in the morning; I don't recollect the time.

Q. Do you know anything about the wind as you came out of Cow Bay?

Ans. I don't recollect anything about the wind, and as I don't recollect that there was any, I don't think there was any wind.

Q. Do you say positively that there was no wind that morning?

Ans. I say positively there was no wind that morning, because if bad one I should have noticed it.

Q. After you got out into the bay did you notice any wind?

Ans. Not until I went down to eat my breakfast. It was what you would call safe weather, but it was commencing to blow a little.

Q. Have you any idea how long you were down at breakfast—half an hour or three-quarters?

Ans. No; I have not. I never hurry myself when I hav'n't anything to do.

Q. Then you have no recollection how long you were there?

214 Ans. I was probably there from 10 to 20 minutes.

Q. Where do you reside?

Ans. I reside on my boat; wherever she is I am, unless I am away on business.

Q. Where is your boat registered?

Ans. In Rochester.

Q. She is a lake boat, then?

Ans. No, sir; the Monroe was, but it is a hull boat I have now.

Q. She is not a Schuylkill boat?

Ans. No, sir; I never was up the Schuylkill.

Q. When you were dropped astern, your hawser was made fast before you were dropped?

Ans. Yes, sir.

Q. And your line was all right?

Ans. Yes, sir; I let all my lines loose before they gave me the hawser, with the exception of this one which I had to cut.

Q. When you were dropped astern you were clear of all the other boats?

Ans. Yes, sir.

Q. You were not, like the Loughney, thumping against the other boats?

Ans. No, sir.

Q. And you say that the Loughney and the Freeman got to thumping each other?

Ans. Yes, sir.

Q. And you say it was after that that the captain and his man

215 jumped from the Loughney onto the tug?

Ans. No, they jumped on the tug before the boats got clear. The port quarter of the canal-boat was locked almost in the stern of the tug, and they were locked together on the bow of the Schuylkill boat.

Q. And you would say there were no danger on board of the Loughney?

Ans. No danger.

Q. Not even with these boats thumping together?

Ans. Not even with these boats thumping together, because there would not have been any thumping if there had been anybody there to cut the lines loose.

Q. Was that line cut loose afterward?

Ans. Capt. Fletcher cut it off himself when he went on board. I would not be actually positive whether Capt. Fletcher took it off or not, but I think he did. I have a positive recollection of the line being there when the boats were lying together and thumping together

216 Re-examined by Mr Geo. Biddle:

Q. You have a positive recollection of it being there when the boats were lying together?

Ans. I have a positive recollection of it being there during the time that these boats were thumping together, but after it was cast loose, or however it got off, I do not recollect the time when it was cut, or parted, or cast off. I recollect the boats being cast off, and then there was no line there. When the wind struck me, I hollooed to this young fellow to cast off that line, but he got struck across the legs and could not do it.

Q. At what time did you run your hawser through the forward bitts and through the metal cleet; was it before or after you loosed the other lines?

Ans. I had got three of them off and then the steward cut the other.

Q. I understand you to say you first got the three lines off?

Ans. Yes, sir.

Q. And you left the steward to cut the other one and ran to fix the hawser in the cleets?

Ans. Yes, sir; I did.

Q. You fixed your hawser after the three lines were loosed?

217 Ans. After the three lines were loosed.

Q. How long have you been in the business of boatman?

Ans. Since I commenced to drive and steer and owning a boat; I should say it is almost 16 or 18 years.

Q. How were these boats fixed when they went out of Cow Bay?

Ans. They were made fast alongside in the usual way, I suppose. I did not pay much attention to the boats on the other side.

Q. You recollect that these were abreast?

Ans. Yes, sir; they were abreast.

Q. I want to ask you, as a professional boatman, whether in good weather that is the way to tie boats?

Ans. That is the way I have always seen them tied.

Q. Where was it Capt. Fletcher' duty to be?

Ans. I should think his duty was on deck.

Re-examined by Mr Couiston:

Q. Do you recollect the time when you went below to get your breakfast?

Ans. No, sir; I should say between 7 and 8, pretty close to 7 o'clock.

Q. Do you know how long after that the boat was lost?

Ans. I should think about an hour and a half.

218 ROBERT DEVINE, sworn and examined.

By GEO. BIDDLE:

Q. What is your business?

Ans. Steward on a boat.

Q. What boat were you on on the 15th of March, 1873?

Ans. On the Game Cock.

Q. Do you recollect going out of Jersey City on Saturday morning?

Ans. Yes, sir.

Q. What o'clock was it?

Ans. I could not tell.

Q. What time did you get to Cow Bay?

Ans. Somewheres along in the afternoon.

Q. What time did you leave Cow Bay in the morning?

Ans. It was somewhere almost before daylight.

Q. What was the time, about, as near as you can recollect?

Ans. As nearly as I can recollect, it might be a little before 4, and it might be a little after 4. It was somewhere from half past three to half past four; but I could not be positive. I didn't look at the time.

Q. When did you first go on deck?

Ans. I could not be positive whether I was on deck when we started first or not, but to the best of my opinion I was.

Q. Were you on deck before you got over to Cow Bay?

219 Ans. No, sir; not before we got out of Cow Bay, that I can recollect.

Q. Do you recollect when you got to Sand's Point?

Ans. Yes, sir.

Q. Do you recollect about the weather was?

Ans. The weather looked favorable.

Q. Was, or was there not, any wind?

Ans. There was no wind that I could notice; that I could call wind.

Q. Can you recall in what direction what wind there was was?

Ans. No, sir; I cannot. There was not enough wind to tell how it was. I generally do look, but there was not any wind that morning to tell how it was.

Q. What time did you get near to Captain's Island?

Ans. To the best of my opinion, when we got near Captain's Island was along about breakfast-time, and that is generally from 6 up to 7 o'clock.

Q. Was it between 6 and 7 when you got there?

Ans. To the best of my recollection, it might have been a little before 7 or it might have been a little after. I would not be positive as to the exact time.

Q. Did any wind spring up?

Ans. There had not any wind sprung up by that time that I can recollect of.

220 Q. Did any wind spring up afterwards?

Ans. Yes, sir.

Q. About when?

Ans. To the best of my recollection, the wind sprung up while we were eating breakfast at the time, at second table. I should judge that that was somewhere in the neighborhood; it might be a little before 7 or it might be a little after, to the best of my opinion.

Q. Did it spring up suddenly or gradually?

Ans. I was not outdoors all the time. I was sitting eating my breakfast. It was not blowing or anything before we had breakfast, but before I got breakfast I had to go out on deck.

Q. What did you see when you got out on deck?

Ans. The first thing that took me out on deck, in the first place, was they hollowed that the tow-line of the Loughney had parted. When we got a line to her, and Capt. Fletcher says, "We will drop the boats back." I says to Capt. Arthur and the deck-hand, "You take one side, and I will take the other." I took the port side with Capt. Burns' boat, the Monroe. In the first place we cast off stern-line and the breast-line, and the next place I carried it, hawser, up the port side of the boat and handed it to him, and he made it fast.

Q. That was after you cast off the lines?

221 Ans. Yes, sir.

Q. What happened then?

Ans. Capt. Burns made his boat fast, and I got his tow-line and commenced to drop her back right away. It was made so fast that we could not get it out, and we had to cut it. We dropped his boat back gradually; of course the Game Cock was running along slowly to give the other boats a chance to cast off, and the men were working on its other side to cast those off too.

Q. What men?

Ans. Capt. Arthur, and the deck-hand, Henry Ryan.

Q. What boat fell behind first?

Ans. The Monroe.

Q. How far?

Ans. I could not say. A hawser was all loose, with one end made fast in the bit's, and carried up aft so that it could go out gradually.

Q. How many fathoms?

Ans. It might be 5 and it might be 20. I could not tell.

Q. Was she a good way behind or not?

Ans. Yes, sir.

Q. What did you see on the starboard side?

Ans. I saw the deck-hand and the mate and the captain. I didn't know who was captain of the Loughney, but there was two men
222 there and two men on the Game Cock, and they were trying to get the line cast off. One end of the hawser was out for a stern-line. The hawser was coiled up on the aft end of the boat, and the end that took the turn around the cleet was made fast on the Game Cock's quarter. They had made it fast on the Freeman somehow, so that they could not cast it off. I said cut the line, and he said cut the line. I could not tell who cut it, but it was cut. Then there was only a little bit on the other vessel, all the rest was on the Game Cock. The deck-hand and the mate took the hawser up the side of the boat. I didn't see who took the hawser, but I saw the hawser on the Loughney.

Q. The rest of the hawser was passed from the Game Cock to the Loughney?

Ans. Yes, sir; and after it was passed the biggest part of it still lay on the Game Cock's stern.

Q. What did they do with it when they got it on board of the Loughney?

Ans. I believe they made it fast, but I could not tell you.

Q. What happened then?

Ans. They carried the hawser up there and, I suppose, the hawser was made fast to the Loughney. I suppose if the hawser was made fast to the cleet it would stay there.

Q. What was the next thing that happened?

223 Ans. Of course the stern-line was cut then, and when the hawser was cut, up came the stern, swung right off, and they had to carry the hawser up a little way to give it to the men on the barges.

Q. You say the hawser was fastened to the cleet?

Ans. To the best of my opinion it was.

Q. What occurred then?

Ans. We commenced to drop them back the same as we had the Monroe, but they did not get away until, I believe, the men jumped off the Loughney, and because the fireman came aft to me, and he says, "One of those men cut his hand awfully bad."

Q. Did you see the Loughney immediately after that, when *if* fell back?

Ans. Yes, sir.

Q. Was there any one on it?

Ans. No, sir; I did not see any one on it. There was one man who belonged on board the Freeman and he came on the Loughney after a while to clear away the hawser. Immediately after the boats began to back, the hawser slipped off. I believe it slipped off, because I helped to haul it in.

Q. How could you tell that it slipped?

Ans. You could tell by these it was cut by the axe before.

Q. What did they do in tug?

224 Ans. I could not exactly tell you whether they backed up or rounded, because I was attending to the hawser that was out to the Monroe. Anyhow, we got a line out to the boats. I threw the heaving-line to the boats.

Q. How did Capt. Fletcher get to the Loughney?

Ans. Him and his fireman lowered the small boat and went there.

Q. How many small boats were there?

Ans. Only one boat that I remember.

Q. Who went with him?

Ans. His deck-hand, Henry Ryan.

Q. Did he or did he not tell the captain of the Loughney to go with him?

Ans. That I could not say. I was not near enough to hear it.

Q. Did Capt. Fletcher get across?

Ans. Yes, sir.

Q. And get aboard the Loughney?

Ans. Yes, sir.

Q. Did you see him there after he was aboard the boat?

Ans. I saw him walk around the boat and sound the pump.

Q. Did you see him put the hatch on?

Ans. I could not say anything about the hatch, because I was the only man aft on the boat, and I had to look after two hawsers?

225 Q. Did you see the captain on the Loughney, M'r Hope, or did he come up to you?

Ans. I saw him quite a while after Captain Bob was aboard the boat. I could not state which was captain, but I saw the two men who came off the Loughney.

Q. Did you say anything to these men?

Ans. No, sir; not at that time, for we were too busy working.

Q. What did he say to you?

Ans. He did not say anything at that time.

Q. What did he say afterward?

Ans. I could not tell whether it was the deck-hand or this captain, but it was one of the two men.

Q. Did you have any conversations with these two men who jumped off the boat?

Ans. Yes, sir.

Q. Did any conversations take place between you and both of those men who jumped off the Loughney when they were together?

Ans. In a general run of conversation we talked of a good many things.

Q. Were any of these general conversations that you speak of between you on the one side and both of the other men when they were standing so that they could hear each other? In other words, did you converse with both of these men together or separately?

226 Ans. I was not with the man who called himself the captain. The man that I saw on the Game Cock was the man who said he was the captain of the Loughney, and Capt. Fletcher gave him five dollars. I was present when he gave it to him.

Q. What conversation did you have with that man to whom Captain Fletcher gave five dollars?

Ans. I do not know as I had much conversation, any further except that I asked him about how thing was. He says to him, "You cannot blame Capt. Fletcher, for he was working pretty hard and done all he possibly could;" and he says, "I didn't blame anybody." That is the only thing that I remember of.

Q. Do you recollect saying anything to him at the stern that day about his leaving his own boat?

Ans. No; I don't remember. I might have said it, but I could not call it to memory, because I didn't know anything about it and never thought of being here or anything of the sort. In fact, I didn't take much notice of it only just from the time I came out on deck until the boat went down.

Q. Do you recollect whether or not the boats, when they were loose, were tied together by any other than by the spring-line?

227 Ans. I recollect they were together. There might be one line held them or it might be three.

Q. But then was a line holding them, at least?

Ans. There was a line.

Cross-examined by M'r Coulston:

Q. Were you steward on the vessel?

Ans. Yes, sir.

Q. Not a deck-hand?

Ans. No, sir.

Q. Your duty was in the cabin and below principally?

Ans. No, sir; not below; in the kitchen, forward.

Q. Were you steward for all hands or did the captain have a cook?

Ans. No, sir; cook and steward were all they carried.

Q. And you were cook and steward?

Ans. Yes, sir.

Q. And you were attending to your duties forward until after you left Cow Bay?

Ans. Yes, sir; we were passing out and in.

Q. But your duties were principally in the kitchen?

Ans. Principally.

Q. You took no note of the weather particularly, did you, on the day you came out of Cow Bay, until the time of this accident?

Ans. I took no more note of the weather when I came out than
228 to see it was nice weather. All hands *no* a steamboat generally pay that much attention.

Q. Do you remember when it first began to be threatening?

Ans. All I remember is that it was a nice morning when we came out.

Q. But do you recollect the time when it began to be threatening?

Ans. Not to be certain.

Q. Do you remember when it began to give indications that it was going to be bad?

Ans. I cannot tell anything about indications. When it commences to blow I know it is blowing.

Q. Do you recollect the hour exactly when it began to blow?

Ans. It was somewhere along from half past 6.

Q. I do not want you to guess at it; if you do not know, say so.

Ans. I cannot tell the positive hour.

229 HENRY RYAN sworn and examined.

By M'r Geo. Biddle:

Q. In what employ were you on the 15th March, 1873?

Ans. Deck-hand on the boat Game Cock.

Q. Do you recollect coming out of Cow Bay on the morning of the 16th, Sunday morning?

Ans. I recollect getting up and helping to heave up the anchor, but anything else I could not say.

Q. Do you recollect the weather?

Ans. Yes, sir.

Q. What was it?

Ans. Very calm.

Q. Did it continue calm after you got outside of Cow Bay, up in the sound?

Ans. Yes, sir.

Q. Were you on deck all the time?

Ans. Yes, sir; all but half an hour.

Q. When did the weather change?

Ans. It changed about 6 o'clock or 7 o'clock; somewhere around there; I would not say for certain; I could not tell; I was in the pilot-house when the squall came up.

Q. Did the squall come up suddenly?

Ans. It came up suddenly. It came easy first and we did not feel it, and then it came upon us.

Q. How soon did you feel it?

Ans. In 20 minutes or half an hour—I would not say for cer-
230 tain—as well as I can refresh my memory. I did not know anything about this until 12 o'clock yesterday, whom I was yanked right here, and I had forgotten all about this matter.

Q. Do you remember what Captain Fletcher did when the squall struck you?

Ans. Captain Fletcher says, "Hank will have to drop these boats astern."

Q. What work did he put you on?

Ans. He did not put me on any work.

Q. What did he tell you to do?

Ans. He didn't tell me to do nothing. I went on deck, and he said, "We'll have to put these boats astern;" and I says, "Bob, you take on' side and I'll take the other." I took the starboard side. The first thing I done was to run aft to get the hawser clear, so then I could pass it over the other boat. I could not get it clear. I said, "Chop the hawser," but I cannot remember whether it was chopped or not.

Q. Do you recollect that it was cut?

Ans. Yes, sir; I remember that it was cut.

Q. What did you do with it?

Ans. I got the end and gave it to the deck-hand of the Schuylkill barge. When the man had the hawser I rushed forward. During the
231 time that I was running forward the captain of the Schuylkill boat jumped right on the tug, right in front of me, and I saw right under his arms.

Q. Did anybody jump with him?

Ans. I didn't particularly notice, because I was busy with other things.

Q. When the boat began to pull this hawser taut what happened?

Ans. I don't know; I could not say.

Q. Did you see the hawser?

Ans. I think I was attending the bits myself, but I could not say.

Q. Did you see the two boats after they became loose?

Ans. There was one man who tried to save the Schuylkill boat by clearing the hawser. I saw on the Schuylkill boat that a man belonging on the Freeman tried to clear the hawser from the cabin of the Schuylkill boat, and as he was trying to clear it the hawser snapped and catched him between the cabin and the hawser, and he fell, and then Perry Burns yanked me by the neck and pulled me aboard.

Q. This boy was trying to clear the hawser on the Laughney?

Ans. There was a high cabin on the boats, and the hawser was catched on it.

Q. Was this the hawser that was running between the Loughney and the Freeman?

Ans. Yes; but the hawser that was on the Schuylkill boat had nothing to do with this hawser. Then Captain Bob and me launched
232 the boat to go to him.

Q. Did you go into the boat?

Ans. Yes, sir.

Q. Did or did you not hear Captain Fletcher tell the captain of the Schuylkill to get on board the yawl and come over with him?

Ans. I heard the word spoke, but I won't say it was there or not. I heard Captain Bob say before that to stay on board the boat or else to go with us and help take care of it, and I don't know which; but he did not do either one way or the other anyhow.

Q. Did Captain Hope's deck-hand come over with you?

Ans. No, sir; me and Captain Bob went together. I went across to Schuylkill boat and helped to put the hatch that was left off, and several times I was knocked down by the wash of the sea; I saved my own life three or four times by holding on to the cleet. I was washed down three or four times. I managed to get one line aft and got fast, and then I started to get the midship line fast and I saw the boat going down and I said, "Captain Bob, leave her; there is no more here for us if we try to save the boat."

Q. Do you recollect the hawser breaking between the Freeman and the tug?

233 Ans. That is something I cannot get into my brain. Me and Captain Bob made the hawser fast on the Freeman after the boat came up to us, but our backs were turned and I turned around and saw the hawser gone. It was off in some way or other, but we got it again.

Q. How long do you think you were on board the two boats?

Ans. I think about three-quarters of an hour.

Q. Was there a pump on board of the Loughney?

Ans. I think there was, but I could not say.

Q. Do you recollect Captain Fletcher going to it?

Ans. I think he said something about it to me, but I won't be certain; I think he did. I am trying to fetch those things up to my memory. I think he said, "Hank, this all right, and we can save her anyhow."

Q. Did Burns leave his boat?

Ans. No, sir.

Q. Did he stay on it all the time?

Ans. Yes, sir; he stayed on the forward cabin on the boat watching the hawser after all was right.

234 Cross-examined by Mr. Coulston:

Q. Where do you live?

Ans. Jersey City.

Q. Were you telegraphed yesterday to come here?

Ans. No, sir; I was down taking the steward' place since he was sent for.

Q. You were in the transportation line?

Ans. No, sir; I have been idle for the last five months. I just took the steward' place to let him come here.

Q. Where is your house?

Ans. 159 Ley street.

Q. What is your business?

Ans. My business is deck-hand.

Q. You were on the Game Cock in 1873?

Ans. Yes, sir; I have been for the last seven years in that line.

Q. You say you did not know anything about this till half past 12 yesterday?

Ans. I guess it was one o'clock. I just had time to run and catch the two o'clock train and get here; that is all the time I had.

Q. When had you been spoken to before about this?

Ans. Never before since the affair happened.

Q. You made no memorandum about it, and you refresh your recollection of it to-day in court for the first time?

Ans. I am trying to do all I can.

235 Q. When did you arrive here?

Ans. Last night.

Q. Where did you report when you arrived?

Ans. Our order was to find M'r Roberts.

Q. Did you find M'r Roberts?

Ans. Not till this morning.

Q. Did you see Captain Fletcher?

Ans. Yes, sir.

Q. Did you have any conversations about it?

Ans. Only to shake hands.

Q. What did you say to Captain Fletcher when you saw him?

Ans. I asked, "What is going to be done?" I don't know anything about this thing. I cannot fetch this thing up to my memory in a few seconds.

Q. Had you any conversation with anybody about it from the time that you arrived here till you were called to the stand to-day?

Ans. Nothing more—I do not know; as far as that is concerned, I had a conversation.

Q. With whom?

Ans. With M'r Fletcher, and also our lawyer.

Q. And you went over the whole case, did you?

Ans. I went over what I thought I could pick up; what I could get out of my brain.

Q. Did anybody ask you what kind of weather it was in Cow Bay on Sunday before you went on the stand?

236 Ans. No, sir.

Q. You did not have your memory refreshed about that?

Ans. No, sir; it all came back to me listening to some of the other men. I got sick listening to them and had to go down-stairs.

Q. You say you heard the testimony of the other men here in court?

Ans. I heard some of them, but I got sick and had to go out.

Q. Whom did you hear?

Ans. I think it was Capt. Bob and the mate.

Q. Have you any recollection yourself, without having heard them, of what kind of weather it was in Cow Bay?

Ans. I have.

Q. What kind of weather was it when you left Cow Bay?

Ans. From the time that we left Cow Bay until we reached Captain's Island it was just as still as a mill-pond.

Re-examined by M'r Geo. Biddle:

Q. Did you have any subsequent conversations with Captain Hope?

Ans. No, sir; he was a man I never spoke to; but then, when we got out at Lloyd's Harbor, he said "Good-bye," and I said "Good-bye."

Q. Did he say anything about this accident?

Ans. No, sir.

Q. Did he say whose fault it was?

A. No, sir.

237 FREDERICK ROBERTS sworn and examined.

By M'r Geo. Biddle:

Q. What is your present business?

Ans. I am president of the Eastern Transportation Line.
Q. That is the company defendant?
Ans. Yes, sir.
Q. Did you ever have any conversation with Mr. Hope?
Ans. Yes, sir.
Q. When was this conversation?
Ans. It was some morning shortly after this accident.
Q. Where were you?
Ans. In the office of the company in New York.
Q. What time of day was it?
Ans. It was in the morning; probably about 10 or 11 o'clock.
Q. Did Mr. Hope come into the office then?
Ans. Two men came into the office, and one of them said he was the captain of the boat Loughney. I think they were in the office when I reached there.
Q. Please state all that took place between you.
Ans. I had heard that the boat had been sunk before I got to the upper office. I went in there and one of the men spoke to me. The first question I asked was one I usually ask, "Where the accident
238 happened?" The captain replied, "About 10 miles to the eastward of Sand's Point." I asked him what he was doing there at that time. The tow had left on Saturday, and they ought to have been further to the eastward, and he said that they had been in Cow Bay. I then asked him how the accident happened, and he said a heavy blow came up and his boat pounded against the boat alongside of him, and he was sunk. I asked him what Capt. Fletcher was doing, and he said that Capt. Fletcher did all that any man could do, and that he went back aboard of her and risked his life when he was not willing to go himself.
Q. Did you say anything more to him?
Ans. I do not remember any more of the circumstance.
Q. I want to ask you a different question entirely. Do tug-boats on the transportation lines keep logs?
Ans. They do now.
Q. When did they begin to?
Ans. About 15 months ago; that was about the time. They did not keep the logs on the boat. We have blank logs, a sheet of paper which is ruled with the names of all ports and mast of the lights from Jersey City to Providence, and one side of the sheet is marked western, the other side is marked eastern. It is the captain's duty to note on
239 these sheets the time that he leaves or the time he passes any one of these ports, with the state of the weather; and that log is turned into the office with his account of work done.
Q. But these logs were introduced long after the accident?
Ans. Yes, sir.
Q. How was it at the time of the accident?
Ans. We had no log then.
Q. Was it customary about the time of the accident for your captains to keep logs.
Ans. They kept no memorandum for the company's account, but I do not know what they might have done for their own account.

Cross-examined by M'r Coulston:

Q. You say that Captain Hope did call at the office of the transportation company?
Ans. There was somebody there who said he was the captain.

Q. Did you recognize him?
Ans. No, sir; I did not. The man's hand was cut.
Q Did he state what he came for?
Ans. No, sir.
Q. Have you stated all the conversation?
Ans. All that I remember. It did not make a very great im
240 pression on my mind.
Q. Will you swear that the man did not come there to hea
what the company would do for him?
Ans. I cannot swear that, because it is not my business to attend t
the law-suits at all.
Q. Do you recognise Capt. Hope as the person who called upon you
Ans. I do not.
Q. Then it may be somebody else, for aught you know, who cam
there?
Ans. I can only say what I have already stated.

By the court:

Q. Did this man give any reason for calling upon you?
Ans. No, sir. You see our office is generally full of men—perhap
there are 30 or 40 men standing there in the morning when I reach th
office—and I only remember the man being pointed out to me as th
captain of the Loughney, and I asked him these questions. I remembe
asking him the questions because I could not understand how it was tha
the loss had occurred so near New York on Sunday morning when th
boat had left on Saturday.
Q. Then you do not know from what occurred between you whethe
he came to the office to see you or not?
Ans. I did not know then he came to the office to see me. If h
241 had called in relation to the loss, or anything about it, it would
not have been in my province to attend to him or it would hav
come under the province of the treasurer of the company; and if he ha
said anything about that I would have referred him down to that officer

By M'r Coulston:

Q. You do not think he came there to be paid for his loss?
Ans. I think if he had said anything about that I would have remem
bered it. I know that the impression on my mind from the time that I
first heard of the accident until we were served with the summons wa
that we would not be sued for that boat. I had no idea that we would
be held responsible.
Q. I do not suppose the whole conversation took half a minute, o
not over a minute.
Q. I will have to tro'ble you to detail every part of the conversation
you had with this man.
Ans. I say that I cannot do that.
M'r A. S. BIDDLE. I now offer in evidence the affidavit of the engineer
(Objected to unless it can be shown that due diligence was used t
obtain the personal attendance of the engineer upon the trial.
Objection sustained.)

242 *Rebuttal testimony.*

PATRICK F. HOPE recalled and examined.

By M'r Coulston:

Q. M'r Roberts has been called as a witness, and you have heard the

conversation which he says took place between you. Did you go to the office of the transportation company in New York?

Ans. Yes, sir.

Q. Whom did you see there?

Ans. M'r Gladwich.

Q. Did you see M'r Roberts?

Ans. I had no conversation with M'r Roberts.

Q. Are you certain about that?

Ans. I am certain about that. I talked with M'r Gladwich.

Q. What did you go there for?

Ans. I went there to see if they would do anything for me in the matter; give me anything for the loss of my boat or give me any assistance.

Q. Did they?

Ans. They did not.

Q. You called there for that purpose?

Ans. That is the purpose for which I went to the office.

Q. You have heard what the other witnesses have said about conversations in which you are represented as having said that you did not blame Capt. Fletcher for the loss of your boat, and that it was all
243 your own fault. Did you ever have any such conversations as have been thus referred to?

Ans. I never said it was all my own fault. I might have said I did not blame any one in talking to the crew.

Q. Did you have such a conversation as that with Capt. Fletcher?

Ans. No, sir; I had no such conversation as that with Capt. Fletcher.

Q. This Monroe, the boat that was dropped back first, was a higher boat than yours, was it not?

Ans. That boat, I understand, had a lighter load on.

Q. It was higher out of the water?

Ans. Yes, sir.

Q. And could stand the sea better than your boat?

Ans. Yes, sir.

Cross-examined by Geo. Biddle:

Q. With whom did you have your conversation in which you said you did not blame anybody at all?

Ans. I could not tell any particular person, that is, of the deck-hands.

244 PHILADELPHIA, *Monday, April* 12, 1875.

HOPE *vs.* THE EASTERN TRANSPORTATION LINE. } U. S. circuit court, eastern dist. of Penn'a.

Charge of McKenna, judge.

GENTLEMEN OF THE JURY: This controversy involves so particularly an inquiry into the truth of facts which the jury, in the exercise of their proper function, must determine according to the view they may take of the evidence on one side or the other, that I propose, in the fewest possible words, simply to state to you the rules of law by which you must be governed in the deductions which you may draw from the evidence. It is shown that a contract was made between these parties, the plaintiff and the defendants, for the towing of a barge, owned by the plaintiff and laden with coal, from the port of Jersey City to the port of New

Haven, and that on the 15th day of March the defendants took
245 this boat in tow and proceeded to fulfill the contract on their part. By this contract the defendants agreed to bring to the fulfillment of it such degree of skill, care, and diligence as might be reasonably necessary and adequate to the performance of their engagements. Accordingly, on the 15th of March, as I have already said, the defendants took this boat in charge and proceeded to take her to her point of destination. On the afternoon, or some time during that day—about this there is a difference in the testimony of the witnesses—they reached the harbor of Cow Bay, and the master of the tug put in there and remained until some time during the following morning. He then proceeded upon his voyage, and, according to the testimony of the plaintiff and the hands employed by him upon the boat, when the vessels went out the weather was not only bad but the sea was rough, and the plaintiff, under these circumstances, remonstrated with the captain of the tug against proceeding on the voyage. The captain did, however, go out, and had gone some distance in his course when the plaintiff's vessel was lost; and the simple inquiry for you is whether this loss is attributable to the fault of the defendants, the master of the
246 tug, or whether it was due to inevitable accident. If you believe the testimony of the plaintiff and the hand' employed by him, I think it would not be controverted that a clear case of negligence is made out against the master of the tug, which is attributable to the defendants here, and the plaintiff would therefore be entitled to your verdict.

On the part of the defendants, it is alleged that when the tug resumed her voyage on the morning of the 16th, about 3 or 4 o'clock in the morning, the weather was calm, and there was no reason to apprehend danger from any possible cause. If this be so, then the defendants are not chargeable with incurring any hazard attending the prosecution of the voyage.

It is alleged further by the defendants, that after the tug had proceeded some distance upon the voyage a sudden storm came up, & that the master of the tug did everything which *was* proper degree of skill and care required of him under the circumstances to avoid any injury to the plaintiff's barge. And here it is proper to say there is no controversy, there is no difference of opinion among the witnesses who have
247 been examined, as to what was required of a person under the circumstances under which this vessel was lost. In fair weather and a smooth sea there is no dispute that the captain of a tug might properly lash his tow alongside of his vessel, either two by two, if he had more than two vessels, or more than this if he had a greater number; and that he might, when there was not severe weather, even throw three vessels astern, lashed alongside of each other; but that where the exigency required it the boats of the tow must be dropped astern of the tug and singled out or put one after the other, as has been described to you by the witnesses; and it would seem, from the testimony on both sides, that under the circumstances here such arrangement of the tow was demanded by the emergency. Such was the condition of the weather and the sea as to require the master of the tug to resort to this arrangement of his tow. The question is, did he make this, the safest, disposition of that tow at a time when the condition of the weather and of the sea required that he should do it, so as to provide, as far as possible, for the safety of the plaintiff's barge? If he did not do it, and the plaintiff by any fault of his own did not contribute to the loss, the defendants are liable for the loss of the vessel.

248 It is further, however, alleged by the defendants, that even if they were in fault, the loss is not due solely to their fault, but that it was contributed to by the negligence of the other party. But the very nature of the contract, or as a necessary incident to it, it was the duty of the plaintiff and the person in his employ to remain upon the barge and to obey such orders as the captain of the tug might properly give to him in relation to the management and the conduct of the vessel. It is alleged that the plaintiff did not do so, and that, under circumstances or at a time when his services were peculiarly necessary upon the barge, he refused to go upon it and to assist the captain of the vessel in providing against the danger in which confessedly the vessels were involved at that time.

Now, if he did so, and his disobedience contributed to the loss, the plaintiff cannot recover; but you will remember the time at which this order is said to have been given and the circumstances in which the parties were involved at that time. According to the testimony of the plaintiff his barge was in a sinking condition. It had, in all probability, been so violently in collision with the vessel to which it was lashed
249 that a leak had sprung, and, according to his testimony and the testimony of the hand in his employment, there was some two feet of water in the hold of his vessel, and he and this other person deemed it necessary that they should abandon it to escape from great peril to their lives. If this be so, then the plaintiff was justified in leaving his vessel. He and his hand were not bound to incur this peril to their lives, and it would not, therefore, be contributory negligence if he did leave the vessel under such circumstances when he had a well-grounded apprehension of peril to his live. If he did not, his groundless fears—if there were not such circumstances as to warrant those apprehensions—would be no justification of his abandonment of the vessel and his refusal to assist the master, in pursuance of his orders, in an effort to save her.

That, I think, covers all that I deem it necessary to say to enable you to make your own deductions from the evidence in this cause and to arrive at a conclusion properly; but the parties on both sides have presented points which, as a matter of courtesy more than anything else, I think proper to answer. I have reduced the answer to writing, which I will read.

250 The plaintiff requests the court to charge the jury as follows:

"1. The defendant's contract to tow the plaintiff's barge in this instance required that he should carry out this undertaking with that degree of caution and skill which prudent navigators usually employ in similar services."

That is answered thus: This point is affirmed, with the verbal modification that the degree of caution and skill required of the defendants is such as may be reasonably necessary and adequate to the performance of the service which they undertook.

"2. If the jury find that the defendants towed the plaintiff's barge in a high wind and heavy sea lashed alongside of the tug and another barge, instead of tailing out behind the tug, and that the plaintiff' barge was lost in consequence thereof, this was negligence on the part of the defendants, and the plaintiff is entitled to recover in this action."

That is answered thus: It is proved on both sides, and is uncontroverted, that under the conditions stated in this point, lashing of two barges together alongside of a tug is imprudent and hazardous, and that the barges ought to be dropped astern of the tug and singled
251 out, thus providing, as far as possible, against their violent im-

pact upon each other. If the jury, therefore, believe that the master of the tug neglected to adjust his tow, as is shown to be proper under the circumstances, they would be justified in imputing negligence to the defendants; and if the plaintiff's barge was lost in consequence, without his co-operative negligence, they ought to find a verdict in his favor.

"3. If the plaintiff was placed in peril by negligence of the master of defendants' tug and jumped from his boat, reasonably supposing it was going to sink, the plaintiff may recover in this action, although the fact of plaintiff's leaving his boat increased its peril.

"4. In such a case the doctrine of concurrent or contributory negligence has no application, because,

"5. If one unlawfully place another in a situation which compels him to undergo one of two hazards and force him to choose upon the instant between these, he necessarily gives him the right of selection and must be responsible for the consequences, although it may turn out that the most fortunate alternative was not adopted."

252 These points are affirmed, and so also as to 6: "If the master of a tug, in towing barges in a wide bay, leave the usual and safest tract and takes one that is not usual and safest, and thereby increases the risk, it is evidence of negligence."

The defendants have also asked the court to give the following instructions:

"1. That the plaintiff's barge, the Mary E. Loughney, was within possession and the exclusive care and control of her owner; and the defendants, the Eastern Transportation Line, were not bailers of the boat, nor was the barge placed within their exclusive custody and control, and they were only liable for failure to use ordinary care and diligence."

That is answered thus: By the contract between the parties the defendants undertook to tow the plaintiff's barge from Jersey City to New Haven. As a necessary incident of this engagement, the defendants were entitled and were bound to assume supreme control and direction of the plaintiff's boat, and of the persons in charge of her, so far as was necessary to enable them to fulfill their engagement, and they were

253 bound to exercise such degree of diligence and care as a prudent and skilful performance of the service for which they stipulated would require.

"2. That the captain of the tow-boat had not such exclusive control as to prevent the plaintiff from breaking up the voyage at Cow Bay, or from leaving defendant's tug there, and the plaintiff had a perfect right so to do; and if he foresaw danger from the condition of the weather, he incurred and assumed the risk thereof himself, and the defendants are not liable for the results of the danger thus foreseen by him."

That is answered thus: The plaintiff had a legal right to detach his boat from the tug in Cow Bay, and to break up the voyage there. But if he did at that point entertain apprehensions of danger from the condition of the weather, he did not assume the risk of it by merely forbearing to exercise such right. Nor will such forbearance absolve the defendants from liability for the consequences of an avoidable hazard resulting either from the dangerous condition of the sea, or an improper and unskilful management of their tow.

"3. That it was the duty of the plaintiff and his bowsman to aid in managing and conducting his boat, and go on board of it

254 when he was directed to do so by the captain of the tug, and if, when he was directed to go on board his own boat to assist in

managing her, he refused to do so, the plaintiff cannot recover in any case, even though the defendants may not have used proper care and diligence."

This point is ~~not~~ denied.

"4. That it was the duty of the plaintiff and his bowsman to aid in managing and conducting his boat, and go on board of it when he was directed to do so by the captain of the tug, and if when he was directed to go on board his own boat to assist in managing her, he refused to do so, and his failure to do so contributed in any degree to cause the loss, the plaintiff cannot recover in any case, even though the defendants may not have used proper care and diligence."

That is answered thus: It was the duty of the plaintiff and his bowsman to aid in conducting and managing the barge, and for that purpose they were subject to the direction of the master of the tug. If the plaintiff declined to obey an order of the master of the tug, and his refusal contributed to the loss, he cannot recover. But if the jury
255 are satisfied that at the time an order was given to him he was justified in an apprehension that his life would be endangered by obeying it, he was not bound to incur that hazard, and his omission to obey it would not condone the defendant's negligence.

"5. If the plaintiff or his hands so fastened the hawser from the tug to the Mary E. Loughney as to allow it to slip, and the slipping of the rope and consequent separation of the boats in any degree contributed to the accident, then the plaintiff is guilty of contributory negligence, and he cannot recover."

That is answered thus: If the plaintiff or his hands carelessly or unskil'fully fastened the rope which attached his boat to the tug, and the separation of the boats was due to this cause, and this separation co-operated in producing the loss, contributory negligence is imputable to the plaintiff, and he cannot therefore recover.

"6. If the jury believe that the conduct of the plaintiff was such as to leave his boat for any time without being under the care or control of any one, the result of which was to contribute to her loss, there the jury should find for the defendants."

That is answered thus: As an abstract proposition, this is true;
256 but, if the plaintiff's boat was left in the condition stated, under circumstances which involved imminent peril to the lives of those who remained on board of her, or warranted a reasonable apprehension of such peril, they were justified in abandoning her, and by so doing were not guilty of contributory negligence.

"7. If the jury believe that the loss would have occurred but for the cutting of the second hawser from the Freeman to the tug by the iron bow of the former, and that it being cut was caused by an accident which could not have been reasonably foreseen, then the verdict should be for the defendants."

That is answered thus: If the jury are satisfied that the master of the tug made a timely effort to drop his tow astern of the tug and to single it out, as is shown to be the safest management of it under the circumstances, and that the loss complained of was primarily caused by the cutting of the second hawser from the Freeman to the tug, then instructions asked for is given, otherwise not.

GENTLEMEN OF THE JURY: If you conclude, after careful consideration of all the evidence after the instructions we have given you,
257 that the plaintiff is entitled to recover, you will find a verdict in his favor for the value of the barge as it has been shown by the proofs, and for the net amount of the freight; that is, I believe, eighteen

hundred dollars, as shown, aside from the testimony of the plaintiff himself, to have been the value of the barge at the time, and ninety dollars the net amount of the freight, so that those two amounts are the sums which the plaintiff is entitled to recover, if you are satisfied that he is entitled to recover at all. If you think that the defendants were without fault, and that the plaintiff himself did or omitted to do anything by which this loss was produced, then your verdict will be generally for the defendants.

R. A. WEST,
Stenographic Commissioner.

The defendants except to the learned judge's answer to the third point of plaintiff, and to the answer to the first and third points and sixth point of defendant.

Defendants also except to judge's charge in fixing the value of the barge at $1,800.00.

258 The judge did not undertake to fix the value of the barge, but merely referred to the proof relating to it, and said the jury would be justified in finding accordingly.

April 12, 1875.

W. McKENNAN.

259 (Indorsed:) C. C. U. S. Patrick F. Hope vs. The Eastern Transportation Line. Bill of exceptions. Filed 22 July, 1875.

UNITED STATES.
Eastern District of Pennsylvania, set:

The President of the United States to the judges of the circuit court of the United States, in and for the eastern district of Pennsylvania, greeting:
[SEAL.]

Because that in the record and process, and also in the rendering of judgment in a suit before you, between Patrick F. Hope, plaintiff, and the Eastern Transportation Line, defendants, in a plea of trespass on the case, a manifest error has entervened to the great damage of the said The Eastern Transportation Line, defendants, as in their complaint has been stated; and as it is just and proper that the error, if any there be, should be corrected in due manner, and that full and speedy justice should be done to the parties aforesaid in this behalf, you are hereby commanded that if judgment thereof be given, then, under your seal, you do distinctly and openly send the record and process in the suit aforesaid, with all things concerning them, and this writ, so that you have the same before the honorable the justices of the Supreme Court of the United States, at Washington, on the second Monday of October next, (1875,) that the record and process aforesaid being inspected, they may cause to be done thereupon what of right ought to be done.

Witness the honourable Morrison R. Waite, Chief-Justice of the Supreme Court of the United States, at Philadelphia, this twenty-ninth day of April, A. D. one thousand eight hundred and seventy-five, and in the ninety-ninth year of the Independence of the said United States.

SAMUEL BELL,
Clerk Cir. C't U. S., E. D. of P'a.

Allowed.
Allowed 30 April, 1875.

JOHN CADWALADER, *Judge.*

260 (Indorsed:) No. . Oct. sess., 1875. Eastern Transportation Line, pl'ff in error, vs. Patrick F. Hope, def't in error. Writ of error. A. S. Biddle, Biddle, Biddle, pl'ff in er.

261 UNITED STATES OF AMERICA,
Eastern District of Pennsylvania, set:

I, Samuel Bell, clerk, do hereby certify the foregoing to be a true and faithful copy of the record and proceedings of the circuit court of the United States in and for the eastern district of Pennsylvania, in the third circuit, in a certain suit therein lately depending between Patrick F. Hope, a citizen of the State of Pennsylvania, plaintiff, and The Eastern Transportation Line, a citizen of the State of New York, defendant.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of the said circuit court at Philadelphia, the second day of August, A. D. 1875, and in the one hundre'th year of the Independence of the United States.

[SEAL.]

SAMUEL BELL,
Clerk Cir. C't U. S., E. D. of P'a.

262 In the Supreme Court of the United States.

THE EASTERN TRANSPORTATION LINE, PL'FF in error,
vs.
PATRICK F. HOPE, DEF'T IN ERROR.

October sessions, 1875.
No. 590.

Assignment of errors.

First. The court below erred in overruling the objection of defendants' counsel to the following question asked Patrick McCarty, a witness by the counsel for the pl'ff: "With your experience, would it be safe or prudent for a tug-boat on Chesapeake Bay, or any other wide water, to tug three boats abreast with a high wind?"

Second. The court below erred in affirming the third point of plaintiff, as follows: "If the plaintiff was placed in peril by negligence of the master of defendants' tug, and jumped from his boat, reasonably supposing it was going to sink, the plaintiff may recover in this action, although the fact of plaintiff's leaving his boat increased its peril."

Third. The court below erred in answering the first point of defendant', viz, "That the plaintiff's barge, the Mary E. Loughney, was within possession and the exclusive care and control of her owner, and the defendants, The Eastern Transportation Line, were not bailees of
263 the boat, nor was the barge placed within their exclusive custody and control, and they were only liable for failure to use ordinary care and diligence," as follows: "By the contract between the parties the defendants undertook to tow the plaintiff's barge from Jersey City to New Haven. As a necessary incident of this engagement the defendants were entitled, and were bound, to assume supreme control and direction of the pl'ff's boat, and of the persons in charge of her, so far as was necessary to enable them to fulfill their engagement, and they were bound to exercise such degree of diligence and care as a prudent and skilfull performance of the service for which they stipulated would require."

Fourth. The court below erred in answering the third point of the de-

[illegible] viz, "That it was the duty of the plaintiff and his bowsman to aid in managing and conducting his boat, and go on board of it when he was directed to do so by the captain of the tug; and if, when he was directed to go on board his own boat to assist in managing her, he refused to do so, the plaintiff cannot recover in any case, even though the defendants may not have used proper care and diligence," as follows: "This point is denied."

Fifth. The court below erred in answering sixth point of the defendants, viz, "If the jury believe that the conduct of the plaintiff [illegible] was such as to leave his boat for any time without being under the care or control of any one, the result of which was to contribute to her loss, then the jury should find for the defendants," as follows: "As an abstract proposition this is true. But if the plaintiff's boat was left in the condition stated, under circumstances which involved imminent peril to the lives of those who remained on board of her, or warranted a reasonable apprehension of such peril, they were justified in abandoning her, and, by so doing, were not guilty of contributory negligence."

Sixth. The court below erred in instructing the jury, "If you conclude, after careful consideration of all the evidence, after the instruction we have given you, that the plaintiff is entitled to recover, you will find a verdict in his favor for the value of the barge, as it has been shown by the proofs, and for the net amount of the freights; that is, I believe, eighteen hundred dollars, as shown, aside from the testimony of the plaintiff himself, to have been the value of the barge at the time, and ninety dollars, the net amount of the freight, so that these two amounts are the sums which the pl'ff is entitled to recover, if you are satisfied that he is to recover at all."

GRAY & DAVENPORT,
GEO. W. BIDDLE,
Of Counsel for Pl'ff in Error.

[Indorsed:] 99. Oct. sess., 1875. Error to C. C. U. S., E. D. of Pa. (S. Oct. 5, 1875.) The Eastern Transportation Line vs. Patrick F. Hope. S. C. U. S. Assignments of errors. Filed 13 October, 1875. Gray & Davenport, New York; Geo. W. Biddle, Phila'a.

[Indorsement on cover:] No. 113. The Eastern Transportation Line, plaintiff in error, vs. Patrick F. Hope. E. Pennsylvania C. C. U. S. Filed 11th September, 1875.



IN THE

Supreme Court of the United States.

THE EASTERN TRANSPORTATION LINE,
Plaintiff in Error,

vs.

PATRICK F. HOPE,
Defendant in Error.

No. 118.

This case comes before this Court by writ of Error to the Circuit Court of the United States, for the Eastern District of Pennsylvania.

Brief and Points on behalf of the Plaintiff in Error.

[Bracketed numbers refer to the folios of the transcript.]

Statement of the Case.

1.—Patrick F. Hope, the plaintiff in the Circuit Court below, brought an action of trespass on the case against the Eastern Transportation Line, defendant in that Court, and therein sought to recover damages for the loss of a canal barge or vessel, and for freight on her cargo.

The complaint alleges in substance that the plaintiff Hope delivered to the Corporation defendant a barge or vessel called the "Mary E. Loughney," of the value of $3,000, to be towed from New York City to New Haven, Connecticut, for a certain reward to be paid them for so doing, and that owing to and "*by reason of the gross and culpable negligence, and want of ordinary care and skill*" on the part of said Corporation defendant in the towing and conducting of the said barge, and of the insufficiency of the steamboat provided for that purpose, the said barge became totally lost.

Record, page 31.

The *plea* of the corporation defendant was "not guilty."

A trial by jury was had, and a verdict was given for the plaintiff and against the defendant below; on which verdict judgment was entered April 24th, 1875, and on 30th April, 1875, this writ of error was obtained by the Eastern Transportation Line.

The following facts appear in the case.

The plaintiff in error was a corporation organized under the laws of New York, and engaged in the business of towing vessels on the waters of Long Island Sound, and around New York City.

The defendant in error, Hope, was the owner of a canal-barge called the "Mary E. Loughney."

On the 15th of March, 1873, a tug-boat belonging to the plaintiff in error took the "Mary E. Loughney" in tow at Jersey City, along with two other barges, for the purpose of towing them up the Sound to New Haven.

The barges were lashed to the tug, two on the starbord side and one on the port side.

Of the two on the starboard side, the "Loughney" was inside against the tug, and the "Freeman" on the outside. The boat on the port side was called the "Munroe" (119, 139).

The tow arrived at Cow Bay, a harbor on Long Island

Sound, in the afternoon of the same day, and it was determined to make a harbor there for the night. About three or four o'clock on the morning of the 16th, the tow left the bay to continue on its course; the boats being lashed in the same manner (119, 139, 217).

The course was to the eastward—east by north (154).

After leaving Cow Bay a breeze sprang up from the west, which increased in force, and the water began to be rough (141, 204).

The captain of the tug-boat, anticipating from the fact that a vessel to the westward of him was shortening her canvass that there would be a *squall*, ordered the tow to be dropped astern and singled out (144).

The "Munroe" on the port side was first dropped astern (141, 144, 145), and then the tug commenced to drop the boats on her starboard side astern (145).

While that was being done, plaintiff Hope, the owner of the "Loughney," and his man became alarmed for their safety and deserted their boat for the tug (120, 126, 142).

There being no person on board of the "Loughney" to attend to her lines and to keep her and the "Freeman" apart, the captain of the tug went on board of her. Her owner, Hope, refused to accompany him, and neither he nor his man returned to the boat, although the captain of the tugboat remained on board the "Loughney" some time (146, 124, 142, 147).

The hawser to the "Loughney" slipped from the cleet on the "Loughney's" bow, and that set the boats adrift (142 147). This hawser had been put out to the "Loughney" from the tug, and was made fast by those on the barge (142).

The "Freeman" and the "Loughney," after they had drifted astern, were fastened together by a hawser; but no person being there to handle lines, the hawser was cut off by a sharp iron on the bow of the "Freeman," in sheering (149).

In consequence of her abandonment by her owner, there

was no one on the "Loughney" to execute the orders and manage her properly, and she drifted about and pounded herself against the other boats until she became injured, filled with water and sank (121).

When the captain of the tug reached the "Loughney," such injury had been incurred as to cause the loss of the barge, and his efforts were unavailing (148, 149, 155).

The plaintiff, Hope, owner and captain of the boat "Loughney" and his man came from Jersey City on the barge, and had remained on board, until, while it was being dropped astern, he and his man abandoned it (119, 120).

When orders were given by the captain of the tugboat to drop the "Loughney" and other boats astern, Hope and his man were on their boat and undertook to execute the order in respect to the arrangement of the lines which connected their boat with the tug and the "Freeman," and they left it before they had properly and fully performed what was required to be done to "tail out" behind the tug. They left their boat with the lines fouled and cut (125, 126, 127).

The plaintiff below attempted to prove that it was imprudent to leave Cow Bay on the morning after their arrival, on account of the appearance of the weather (119); but he testifies (122) that "there were no waves at all when they started," and (119) that after leaving Cow Bay there was a strong wind from northwest. He judged about the weather before he left Cow Bay from the "way the wind was blowing" (122).

If "there were no waves," it is difficult to understand how there could have been any wind blowing, and if it was rough out of the harbor it would certainly have been noticed in the water in the bay.

The testimony of the defendant's witnesses, including Burns, a wholly disinterested witness, agrees that when the tow left Cow Bay there was *no* wind (141, 143, 191, 203, 219).

II.—Plaintiff below called Patrick McCarty, a witness, to

testify as to proper mode of towing. He testified (p. 39) that he "was not familiar with the Sound," and that "*the mode of towing three barges abreast depends upon the weather*," and that "*it was always a measure of discretion with the captain.*"

He was then asked his opinion: "With your experience, would it be safe or prudent for a tugboat on Chesapeake Bay, or other wide water, to tug three boats abreast with a high wind?" Defendant below objected to this question; but witness was allowed to testify, and answered: "By no means."

The evidence, from its nature and the previous testimony of the witness, seemed utterly incompetent.

This evidence formed part of the case which was given to the jury.

After the evidence was in on both sides, the Court charged the jury and answered requests presented by both parties.

The charge of the Court, previous to passing upon the requests, failed to define the degree of care and diligence of defendant below.

Rec., pp. 81–83.

It being a case where plaintiff's right to recover was based upon the degree of care and diligence exerted by defendant's servants in its undertaking, the jury should have been instructed as to whether ordinary or extraordinary care and diligence was required, and consequently whether slight or gross negligence would impose liability.

The plaintiff below, in his complaint, rested his right to recover upon "the want of ordinary care and skill," and upon the existence of "gross and culpable negligence."

Defendant below therefore presented a request (252) defining the character of their undertaking and the extent of their liability in its performance.

But the Court refused to charge as requested, and answered in a manner which failed to instruct upon this vital point.

So the whole charge was deficient in this very important respect.

The Court charged the jury as to the amounts they should give a verdict for, if they found the plaintiff below, entitled to recover.

Rec., fol. 257.

As the testimony was unsatisfactory on the question of value, and the amount of damages plaintiff was entitled to recover uncertain, if it appeared in evidence at all, this was deemed an instruction, erroneous and prejudicial to defendant below. Defendant below, therefore, excepted to the charge of the Judge in that respect. All the evidence as to value will be found at folios 121, 128, 131, 132, of Record.

The Court in affirming the first request of plaintiff below ignored to the jury the existence of any evidence going to show contributory negligence on plaintiff's part.

Rec., p. 84.

The instruction contained in the answer of the Court authorized the jury to find for plaintiff below, providing they believed he left his boat "reasonably supposing it was going to sink." There was no qualification which would protect defendant's rights as against plaintiff's claim, if other evidence existed showing negligence in other respects.

How manifestly misleading this instruction was, will be evident to the Court when its attention is directed to the evidence of both parties, showing that plaintiff below was neglectful and careless in handling the lines of his boat at the time it became necessary to change her position towards the tug.

We discuss this evidence under Point III.

If the jury should believe this other evidence as to negligent conduct on the part of plaintiff below it would determine the case in our favor.

But they were substantially instructed that there was none such for them to consider.

Exception was therefore taken by defendant below.

It was not disputed that plaintiff below left his boat some time before it sank and went on the tug (123, 126).

There was testimony on behalf of the defendant below that the tug captain seeing the barge adrift and with no one on board, put off from the tug for the barge and requested its owner to accompany him, which he refused to do (142, 147, 232).

Defendant below presented the point (defendant's 3d request, p. 84), that it was the duty of plaintiff below to aid in managing and conducting his boat, and to go on board of it when directed by the tug captain, and if when directed to do so, in order to aid in managing it he refused, that he could not recover, notwithstanding a failure on defendant's part to use proper care and diligence.

The Court denied this absolutely and defendant below excepted.

We conceive that if the jury should believe the evidence of witnesses of defendant below that Captain Fletcher did direct Hope to go with him to the barge, and it was, as it certainly appears to be from the proof, a feasible and proper thing, that such refusal was an act which exonerated the defendant below from liability.

In the 6th request of defendant below (Rec., p. 85) it was the object of defendant to have a ruling and instruction on the question of contributory negligence, and the request was correct.

We were entitled to have the jury instructed that conduct on part of plaintiff below which contributed to the loss of his boat precluded his recovery.

The attention of the Court is directed to the answer to the request, which practically denies our point.

To say, that we presented a proposition true in the abstract was equivalent to saying that it was untrue applied to the present case.

Exception was again duly taken by defendant below.

The foregoing statement as to the rulings of the Court below admitting McCarty's evidence against the objection of defendant below, and

As to the answers of the Court to certain points presented by counsel for the parties litigant, and

The instruction to the jury as to what should be the amount of their verdict, if for plaintiff,

Suggests the questions which arise for argument.

ASSIGNMENT OF ERRORS.

Rec., pp. 87, 88.

The Court below erred.

First.—In overruling the objection of defendant's counsel to the following question, asked of Patrick McCarty, a witness, by the counsel for the plaintiff.

"With your experience would it be safe or prudent "for a tug-boat on Chesapeake Bay or any other wide "water, to tug three boats abreast with a high wind?"

Second.—In affirming the third point of the plaintiff as as follows:

"If the plaintiff was placed in peril by the negligence of "the master of defendants' tug, and jumped from his boat, "reasonably supposing it was going to sink, the plaintiff "may recover in this action, although the fact of the plain- "tiff's leaving his boat increased its peril."

Third.—In answering the first point of the defendant, namely:

"That the plaintiff's barge, the "Mary E. Loughney," "was within the possession and the exclusive care and "control of her owner, and the defendants, the Eastern "Transportation Line, were not bailees of the boat, nor "was the barge of the plaintiff within their exclusive cus- "tody and control, and they were only liable for failure "to use ordinary care and diligence"—as follows:

"By the contract between the parties, the defendants "undertook to tow the plaintiffs' barge from Jersey City "to New Haven. As a necessary incident of this engage- "ment, the defendants were entitled to, and were bound to "assume supreme control of the plaintiff's boat, and of "the persons in charge of her, so far as was necessary to

"enable them to fulfil their engagement, and they were "bound to exercise such degree of diligence and care, as "a prudent and skillful performance of the services for "which they stipulated would require."

Fourth.—In answering the 3d point of the defendant namely:

"That it was the duty of the plaintiff and his bowsman "to aid in the managing and conducting of his boat, and "to go on board of it, when he was directed to do so by "the captain of the tug, and if when he was directed to go "on board his own boat to assist in managing her, he re- "fused to do so the plaintiff cannot recover in any case, "even though the defendants may not have used proper "care and diligence" as follows: "This point is denied."

Fifth.—In answering the 6th point of the defendants'— namely:

"If the jury believe that the conduct of the plaintiff was "such as to leave his boat for any time without being un- "der the care or control of any one, the result of which "was to contribute to her loss, then the jury should find "for the defendants," as follows:

"As an abstract proposition this is true. But if the plain- "tiffs' boat was left in the condition stated, under circum- "stances which involved imminent peril to the lives "of those who remained on board of her, or war- "ranted a reasonable apprehension of such peril, they "were justified in abandoning her, and by so doing were "not guilty of contributory negligence."

Sixth.—In instructing the jury:

"If you conclude after careful consideration of all the "evidence, after the instructions we have given you, that "the plaintiff is entitled to recover, you will find a verdict "in his favor for the value of the barge, as it has been "shown by the proofs, and for the net amount of the freights; "that is, I believe $1,800, as shown aside from the testi-

"mony of the plaintiff himself to have been the value of "the barge at the time, and $90, the net amount of the "freight; so that these two amounts are the sums which "the plaintiff is entitled to recover, if you are satisfied "that he is to recover at all."

Point I.

The Court below erred in overruling the objection of defendant's counsel to the following question asked of Patrick McCarty, a witness, by the counsel for the plaintiff.

Transcript, page 39, folio 133.

"With your experience, would it be safe or prudent for "a tugboat on Chesapeake Bay, or any other wide water, "to tug three boats abreast, with a high wind?"

This question was objected to by the counsel for the plaintiff in error, but was overruled by the Court. Counsel excepted to the ruling. The witness answered the question, "By no means."

Folios 132–133.

The witness had just previously testified as follows: "I "am a steamboat man and waterman; I am agent for a "transportation company, and a boatsman agent of C. E. "Dilkes & Co., who are engaged in the transportation bus- "iness by barges and other vessels; I was captain of a tug "in 1862; was captain from that time, with short inter- "vals; I was one of the agents of the line; I had a gen- "eral business of making up tows, &c. I am not familiar "with the Sound. I have towed vessels on Long Island "Sound. I always had a pilot. I was captain of a tug for "seventeen years. The mode of towing 3 (three) barges de- "pends upon the weather. It is always a measure of dis- "cretion with the captain. They will not go so fast abreast "of a boat; when weather commands, we tow them "astern; when the weather gets bad, we make a tier of

"them behind; and if worse, we tail them out singly. "Familiar with Chesapeake."

1. The evidence should have been rejected, because:

(*a.*) That was a question for the jury to decide and not one on which, under such issues, the opinion of witnesses is admissible. The purpose was nothing less than to elicit the opinion of the witness upon the questions put in issue by the pleadings and which were to be determined by the jury.

(36 Barb., 209.)

(*b.*) The witness was shown to be incompetent. The witness had just previously said he was "not familiar with the Sound" (folio 132), and he admitted "it was always a matter of discretion with the captain" as to the "mode of towing three barges."

Folios 132 and 133.

(*c.*) The question assumed a state of facts not proved.

(*d.*) The question was objectionable as being leading and pregnant, and because, embodying a material fact, it admitted of an answer by a simple negative or affirmative.

1 *Greenl. on Evid.*, § 434.

2d. And if the testimony was incompetent, its admission was such error as to warrant a reversal of the judgment.

Shearer v. *Clay*, 1 Littell (Ky.) R., at p. 268.

Was on a writ of error to reverse a judgment. Certain incompetent evidence had been admitted in the Court below, upon a certain question. It appeared that afterwards competent evidence was introduced as to the same question. The language of the Court seems so in point that we quote from its opinion:

"Hence the question arises, when improper evidence of a "material fact is admitted, and the record shows that after- "wards proper evidence of the same matter is introduced, "ought the judgment, on account of this error, to be reversed? "or ought the error to be considered as corrected by the sub- "sequent testimony? If the proper evidence introduced after "the improper, was of a conclusive character, the error might "perhaps be cured; but when the proper evidence consists in "the swearing of witnesses, and is, from its nature, contestable "in many ways, we cannot say that the jury was guided by the "proper evidence alone, or that that which was improper had "no influence."

"We cannot know but that the jury, from the manner itself "in which the witness, who deposed of his own knowledge, de- "tailed the facts, might have doubted or disbelieved his testi- "mony. For this reason, we conceive this error" (in admit- "ting this testimony), "must be held fatal to the judgment, "however much we may regret disturbing a verdict in a cause "which in all other respects seems to be fairly and correctly "decided."

In Baird v. *Gillett* (47 *N. Y., p.* 187), *the Court held :*

"If improper evidence be given upon a trial, although it be "merely cumulative, it will be cause for a reversal."

See also *Williams* v. *Fitch*, 18 *N. Y.*, 546.

Point II.

The Court below erred in refusing to allow the first request to charge of defendant below and in answering that request as it did.

Transcript, fol. 252, p. 84.

The object of the request was that the jury be correctly instructed as to the *degree* of skill and diligence required of the defendant below, to wit: "*ordinary*" skill and diligence. The answer to our request was in fact its disallow-

ance and the jury were thereby left to understand that a *greater* degree was required. To leave the jury thus, without adequate instruction as to the degree of diligence required, was distinctive error and as such is fatal to the judgment.

The request was as follows:

"That the plaintiff's barge, the "Mary E. Loughney," "was within the possession and the exclusive care and con- "trol of her owner; and the defendants, the Eastern Trans- "portation Line, were not bailees of the boat, nor was the "barge placed within their exclusive custody and control "and they were only liable for failure to use ordinary care "and diligence."

To which the Court answered:

"By the contract between the parties the defendants "undertook to tow the plaintiff's barge from Jersey City "to New Haven. As a necessary incident of this engage- "ment the defendants were entitled, and were bound to "assume supreme control and direction of the plaintiff's "boat, and of the persons in charge of her, so far as was "necessary to enable them to fulfil their engagement, and "they were bound to exercise such degree of diligence and "care, as a prudent and skilful performance of the service "for which they stipulated would require."

Recovery by plaintiff below was impossible if defendant below exercised the degree of diligence required of him by the law of his contract.

It was therefore of vital importance for the proper protection of the interest of defendant below that the jury should be instructed as to the degree of diligence required by the contract.

> "In an action for negligence the Judge is bound, if requested, "to instruct the jury as to the degree of care which the par- "ties ought to have used."
>
> *Crary* v. *Marshall*, 1 E. D. Smith (N. Y.) 530.

If it should appear that the contract required only "ordinary" care and diligence the refusal of the Judge so to charge when requested, is error, and an error which goes to the root of the entire action.

It is well settled that the contract in this case only required of plaintiff in error the exercise of *ordinary* care and diligence.

2 *Parsons Contracts*, 170.
Story Bailments, § 496.

Wells v. *Steam Nav. Co.* (2 N. Y., 208.)

"The property towed is neither delivered to them nor "placed within their exclusive custody and control. It re- "mains in the possession and for most purposes in the ex- "clusive care of the *owners* or their servants."

"*Jim. Watson*" (2 Bond U. S. C. C., 357.)

"The tow boat is only liable for loss caused by gross ne- "gligence."

Leonard v. *Hendrickson*, (18 Penna. St. R., 40):

"This exercise of power is peculiar and limited. It is gen- "erally for short distances under the eye and observation "of the owner, who often accompanies by himself or agents "the property towed for him. If there is peril from the "sudden rise of the water or other unforeseen danger he "may terminate the conveyance at any point of safety in his "opinion * * * His (that is the tug boat captain's)— "contract has reference to size, tonnage and obstruction to "which the power of his boat is to be applied, and the con- "nection of his boat by the chain or rope with the vessel, is "the limited control he has over the property thus trans- "ported."

Alexander v. *Greene*, (3 Hill, N. Y. 9):

"They (who tow) do not receive the property into their "custody, nor do they exercise any control over it, other than "such as results from the towing of the boats in which it is "laden. They neither employ the master and the hands of

"the boat towed, nor do they exercise any authority over "them, beyond that of occasionally requiring their aid in "governing the flotilla."

Arctic Ins. Co. v. *Austin*, (54 Barbour, 559):

"They (the captain and crew of the canal boat) are not "the servants of the captain of the tow boat. His undertak- "ing is to tow them. In doing so he is required to use skill "and care to avoid injury, but he does not put his men on "board of the boat towed. The captain of the boat must see "to her guidance * * * and to take the necessary pre- "caution on his part. If he omits care and precaution, and "injury ensues from such neglect, he, and not the tow boat, is "to bear the consequences."

Hays v. *Paul*, (51 Penn. St. R.):

The law of common carriers does not apply to the undertaking in this case, and plaintiff in error was not subject to any of the liabilities which the law imposes upon a common carrier. They were not called upon to exercise that extraordinary care and diligence which is required of a common carrier.

Story Bailments, § 496.
2 *Kent's Com*, 4th Ed., 598, 599.
"*The Webb*," 14 Wall, 414.
Abbey v. *Steamboat*, 22 How. Pr., (U. S. D. C) 80 (N. Y.)
"*The Jim Watson*," 2 Bond, U. S. C. C., 358.
Caton v. *Rumney*, 13 Wendell, 387.
Wells v. *Steam Nav. Co.*, 2 Comst., (N. Y.) 204.
Woodin v. *Austin*, 51 Barbour, 9.
Taft v. *Carter*, 59 Barbour, 67.
Arctic Ins. Co. v. *Austin*, 54 Barbour, 559.
Milton v. *Hudson R. Steam Co.*, 37 N. Y., 213.
Leonard v. *Hendrickson*, 18 Penna. St. R.
Hays v. *Paul*, 51 Penna. St. R.

No such special relation existing between the parties as that of a common carrier, who is under a positive obliga-

tion to deliver safely, the law presumes, until the contrary is proved, that defendant below had complied with all the obligations incumbent upon it (Daniel *v.* R. R. Co., 3 C. P., 216, 591), and damage sustained by the tow does not raise a presumption that the tug has been in fault (14 Wall., 414).

The error committed by the Court in refusing to instruct the jury that ordinary care and diligence was all that was required, was not compensated for by stating that the defendant below was bound to exercise "such degree of diligence and care as a prudent and skilful performance of the service for which they stipulated, would require."

Every proper performance of any contract for service or skilled labor, must be a prudent and skilful performance. These terms, which are applicable to all such contracts, cannot be relied upon to define any one class of them. A prudent and skilful performance of a contract of one class may require the exercise of a very different degree of skill and diligence from the prudent and skilful performance of a contract of another and different class.

The Court, when so requested, should have defined what degree of skill and prudence was called for; whether ordinary or extraordinary.

The Court left the jury without any instruction or guide as to whether the plaintiff in error was required to use ordinary or extraordinary care and diligence.

The main charge was equally deficient in this respect.

Correct instructions, if applicable to the case, the Court as a general rule, is bound to give, unless the same are in substance embodied in those previously given to the jury.

Ins. Co. vs. Baring, 20 Wall., 159.

The defendant in error based his right to recover upon an alleged want of proper care and diligence, and by refusing to charge as requested the Court gave the jury to understand that the plaintiff in error—the towing parties—were bailees of the barge and that extraordinary care and diligence were required of them.

The disastrous effect of this ruling upon the minds of the jury will be evident from a perusal of the proofs.

The tow started, according to all the witnesses of defendant below, with a quiet sea and with little or no wind. Plaintiff below, on cross-examination, says, (122) "When "we started there were no waves at all," and though they "were in harbor," yet if there were "no waves at all" in harbor, the sea outside could hardly have been dangerously rough. The plaintiff below said (122), "I judged then from "way wind was blowing; sky was cloudy, and gave evi-"dence of heavy storm." The captain of the tug said (140), "There was no wind and no sea; I felt we were going to "have a good day." * * (143) "The weather was fine." * * * (167) "According to my judgment I thought we were go-"ing to have a pleasant day." * * * (183) "I judged from "the looks of the horizon."

But this was a matter of judgment and discretion and there is no evidence that ordinary diligence was not exerted in exercising this discretion. As the captain of the tug says, even "Probabilities" does not always tell the truth about the weather" (176). Again, the captain of the tug was called upon to exercise his discretion, this time in selecting the time for changing the position of the barges from abreast to in-line. Patrick McCarty, called as an expert by the owner of the barge, says (p. 39): "The mode of towing three barges depends "upon the weather. It is always a measure (matter) of "*discretion* with the captain. When weather commands "we tow them astern; when the weather gets bad we "make a tier of them behind, and if worse we tail them "out singly." Malone, called as an expert by the owner of the barge, testifies (p. 41): "*I don't think it would be a "good thing to change from sideways to in-line until they "begin to pound.* It is the customary way to go alongside "in good weather; I guess they would go faster; they "should not be dropped back until they begin to pound; "* * it is not usual when wind is very high to tug along-"side. In a high sea and bad weather you must single out."

So soon as indications of a squall appeared the order was given to drop the barges back in the manner claimed by plaintiff below to be the safest under the circumstances. The tug captain says (fol. 177): "I did not think it was "going to be a squall until I saw the vessels at the head of "the sound shortening sail, but after I thought it was "going to be a breeze of wind I dropped my boats back."

The mate of the tug says (fol. 191): "The sun was up a "little ways when I got up; it was blowing quite a breeze "then, nothing very heavy, but what we would call a good "stiff breeze. I started to go aft on the starboard side, and "the captain says, 'we will have to drop these boats "back.' The boat that was on the starboard side—the "Loughney's spring line parted, and we went to hurrying "and dropping them past as fast as possible."

They commenced dropping the boats back before the Loughney commenced to pound (fol. 184), and one to two hours before she sank (178). Perry Burns, owner of one of the boats the Monroe, lent proper assistance, and his boat was dropped back without difficulty or danger (fols. 204, 216, 221).

On the starboad side a hawser was passed to the "Loughney" which was made fast to one of her cleets by the deck hand of the "Loughney" and the boy on the "Freeman." This hawser slipped without possibility of fault on the part of the tug, and the "Loughney" and "Freeman" fell adrift lashed together. The defendant in error and his hand instead of remaining on board to handle the lines and to catch a hawser jumped off on the tug, leaving the two barges lashed together and pounding badly. No one being on the "Loughney" to handle the lines, the tug captain went aboard of her (147), closed her hatches (149), and remained aboard doing what he could while the tug came around again, but before he could complete the rescue the "Lougney" became unsafe and sank. This is the evidence of the captain, mate, steward and deck-hand of the tug, and it is fully substantiated by Burns the captain of the barge Monroe, the only wholly disinterested witness on

either side. This witness testifies (pp. 67, 68), that after the first hawser slipped "the boats dropped back and one "got into the other's side and they commenced pounding "pretty heavily. * * It was only because of this line, "and if there had been some one there to cast off this line "they would not have been pounded; they would have been "parted. Q. You mean the line they had forgotten to slip "off? A. I suppose so. Q. To whose negligence or fault "do you attribute the loss of the 'Loughney'? A. I think "it was the negligence of the men in jumping off their boat "and not casting their line loose."

On reaching port the owner of the barge admitted that there was no blame on the part of the tug. Says the captain of the tug (fol. 156): "I said to him, 'in losing this "boat there is no one to blame for it but yourself; you left "your boat and abandoned her,' and he said he did not "blame any one; he said he thought I had done all I "could.'" And the owner of the barge, at the close of the trial virtually admits the truth of this testimony. "I "might have said *I did not blame anyone* in talking to the "crew (fol. 243)."

See fols. 226 and 238.

It must be apparent to the Court that with such proofs and with the uncontradicted admission of the plaintiff below, made when the events were yet vividly remembered, that "no one was to blame on the part of the tug;" the jury must have been misled by the ruling of the Court below and have supposed that something more than "ordinary" care and diligence was required—that the defendant below was subject to the liabilities and obligations of a common carrier—that they were practically insurers of the barge and bound to exert *extraordinary* care and diligence.

To leave to the jury a case of this sort against a corporation without strictly for its protection defining its duties and its rights is to secure its defeat.

(3 Com. Bench R., N. S., 146.)

Point III.

The Court below erred in allowing the following request to charge of plaintiff below. "If the plaintiff was placed "in peril by the negligence of the master of defendant's "tug and jumped from his boat, reasonably supposing it "was going to sink, the plaintiff may recover in this action, "although the fact of plaintiff's leaving his boat increased "its peril."

(Transcript, page 84, folio 251.)

The error consisted in this; that the Court failed to define what degree of negligence on the part of the master of the tug was sufficient to make the defendant answerable for the peril to the plaintiff, and the Court practically denies the possibility of plaintiff's peril being the result of his own negligence; of which there is evidence.

(*a.*) Only ordinary care and diligence was required of the master of the tug.

The above charge makes him responsible for any, even the slightest negligence; there is absolutely no limit fixed within which the defendant below could find protection. This was error, and it is not compensated for in any portion of the charge or instructions of the Court below.

(*b.*) There is evidence that the condition of plaintiff's boat, from which he feared peril at the time of abandoning her, was due, in part at least, to his own want of proper care and diligence. Plaintiff's own description is as follows: "My line parted. "He ran his line out; I went aft and found my "boat was taking water; my man hollowed to me "'come up or we will be lost.' We were one hun- "dred yards from tug. 'Freeman' and my boat "were pounding when I came on deck. I did not "leave till she nearly sank. 'Allen Monroe' ran up "into my stern. This was after boats had broken

"loose" (folio 120), * * * * "I can't say "whether my line broke or slipped; I was in the "cabin" (folio 125).

Now it is in evidence that this line was put out from the tug immediately on the parting of the "Loughney's" breast line, and was wound around cleet of "Loughney" by her deck hand. This was when the owner of the "Loughney" was still in his cabin, not attending to his lines in any way. The line was improperly placed upon the cleet and slipped, and the "Freeman" and "Loughney" fell back from the tug. They were lashed together, and no effort was made by the "Loughney's" people to drop one of them astern of the other, or to cut the line which held them together. As a consequence of this they pounded, and the "Loughney" also came into collision with the "Monroe" which had been dropped astern of the tug. All this happened before the "Loughney" was abandoned.

There is therefore evidence, and it is probably the fact, that the condition of the "Loughney" at the time of her abandoment was directly attributable to the imperfect manner in which the hawser was fastened to the cleet, and to the neglect of the "Loughney's" people to loosen the line holding the "Loughney" to the "Freeman," and to drop one astern of the other (fols. 146, 153, 154, 207, 209).

If this were so, the plaintiff below contributed by his own negligence to bring about the alleged position of peril, and by the doctrine of contributory negligence the defendant below is relieved from any responsibility for accompanying negligence on the part of the master of the tug.
Addison on Torts, 81; 19 Conn., 566; 10 Mees. & W., 546; 24 N. Y., 432.

In *Stow.* vs. *Vermont Central R. R. Co.* (24 Vt. 487) it was held :

> "When there is mutual negligence on the part of plaintiff "and defendant, and the negligence of each was the approxi- "mate cause of the injury no action can be sustained."
>
> (101 *Mass.*, 455 ; 39 *Vt.*, 246 ; 52 *N. H.*, 528 ; 8 *Ohio N. S.*, 570.)

(*c.*) The affirmance of this point also excluded from the jury all necessity of considering the effect of Hope's acts subsequent to his leaving his boat. If Hope could have returned to his boat with Captain Fletcher and aided in putting her right and thus saving her in whole or in part, his failure to do so was such conduct as might and should affect the verdict.

If there existed such reasonable apprehension of peril as justified Hope's leaving the "Loughney," it would not follow that he was not bound to return and to assist in recovering her, if he could have done so without peril to his life.

There is evidence that he was asked to return to his boat and refused.

Fols. 142, 147, 155, 232.

The Court may have intended to charge that the fact of Hope's leaving his boat if placed in a position of peril to his life by the negligence of the tug, would not preclude his recovery ; but the language of this point goes much further : "If the plaintiff was placed in peril by negligence " * * * and jumped from his boat reasonably sup- "posing it was going to sink, &c., *he may recover in this* "*action*, though the fact of plaintiff's leaving his boat in- "creased its peril."

The instruction of the Court in question *prejudged* the question of contributory negligence, by ignoring to the jury the existence of any evidence going to prove it.

Point IV.

The Court erred in *denying* the third request to charge of the defendant below.

(Transcript, page 84, folio 254.)

The request was: "That it was the duty of the plaintiff "and his bowsman to aid in managing and conducting his "boat, and to go on board of it when he was directed to do "so by the captain of the tug; and, if when he was directed "to go on board of his own boat to assist in managing her, "he refused to do so, the plaintiff cannot recover in any "case, even though the defendants may not have used "proper care and diligence."

We think, in view of the fact, that the evidence both of plaintiff and defendant below shows, that after the plaintiff below left his barge adrift the captain of the tug put off to it to rescue it from its dangerous position alongside of the "Freeman"—thumping and pounding itself; that the owner of the barge would not accompany him, and that the captain of the tug remained on the barge some time (folios 123, 124, 142, 147, 149, 152, 215), that if the jury believed the plaintiff below was directed by captain Fletcher, of the tug, to go on board the barge and assist in managing it, and he refused, he should not recover.

Point V.

The Court below erred in its answer to the sixth request to charge of the defendant below.

(Transcript, p. 85, folios 255, 256.)

The request was: "If the jury believe that the conduct "of the plaintiff was such as to leave his boat for any "time without being under the care or control of anyone,

"the result of which was to contribute to her loss, then "the jury should find for the defendants."

The Court answered: "As an abstract proposition, this "is true. But if the plaintiff's boat was left in the condi- "tion stated, under circumstances which involved imminent "peril to the lives of those who remained on board of her, "or warranted a reasonable apprehension of such peril, "they were justified in abandoning her, and by so doing "were *not guilty* of contributory negligence."

The practical effect of this answer was *to deny the request* instead of merely qualifying it; and this was error.

The Court said: "As as abstract proposition, this is "true; but," etc. That is to say—It is only an abstract proposition without relation to or bearing upon the facts of the present case—As a proposition resting only in the mind and in relation to facts not before you it is true.

The Court may have intended to allow the request with a qualification; but the language of the Court wholly failed to express such intent. The practical effect was to deny the request and not to qualify it. It sank out of sight the doctrine of contributory negligence, upon which defendant below relied and had a right to rely, and magnified and emphasized the alleged excuse for plaintiff's abandonment of his boat and refusal to return to her, in such a way to impress the jury with the idea that the excuse was all sufficient and borne out by the evidence.

Point VI.

The Court below erred in fixing in its charge to the jury, the value of the barge and freight, and in stating to the jury, that the sum so fixed "are the sums which the plain-

"tiff is entitled to recover if you are satisfied that he is to "recover at all."

(Transcript, page 85, folio 257.)

The evidence of value was wholly unsatisfactory, and should have been left to the jury without instruction or expression of opinion as to the amount to be determined.

The following is all the evidence in the case regarding value. Plaintiff below testifies (121): "My boat was sea- "worthy; she had been overhauled by Fisher & Sons, in "1872, at the expense of $200; * * boat was built in "1866; I refused $1,800, in 1872; she cost $3,000 originally "for the bare hull. Q. Have you any knowledge what "such a boat was worth? A. I held boat at $2,000; re- "fused $1,800; this is what I considered value of boat. (bill "of lading offered in evidence to show freight of $256); "* * * (126) Last insurance I had ran out on 10th De- "cember, 1872; I didn't try to renew it; I don't know "why I didn't; I didn't feel like it."

The Loughney's deck hand Brannan, testifies (128): "Her condition was sound; boat sweated a little."

"Fisher testifies (131): I am a ship carpenter, etc.; know "the Loughney; I overhauled her thoroughly in Summer "of 1872, $200 worth of repairs; she was perfectly sound, "* * needed nothing than we put on her; she did not "look to be over two years old; she looked like a "new boat; boat was not scarred up; I can form "a pretty accurate estimate of age of boat; "12 years is the average life of a boat of this kind. I do "not know how much the value of this boat would be if 6 or "8 years old. She was worth $2,500. There was no evidence "of being scarred up when I saw her; boat bore evidence "of good care." James Loughney testifies [132]: "I have "not seen her since the fall of 1872; her condition then "was thorough; I offered $1,800 for the "Loughney" in "fall of 1872; he wanted $2,000 for her; I recollect the oc-

"currence; it was before my offer of $1,800 that she was re-
"paired; because the boat was called after my wife I of-
"fered $1,800."

A slight analysis of this testimony will show its entire inadequacy as proof of the value of the barge in March, 1873, when she was lost. None of the witnesses as to value were shown to be experts as to the value, or even to consider themselves competent to judge of value. On the contrary, the plaintiff below, when asked by his counsel whether he had any knowledge what such a boat was worth, made no responsive reply; and the witness Fisher expressly said that he did not know what the value of the boat would be if 6 or 8 years old, whereas the boat was in fact in her seventh year when lost. No witness undertook to fix the value of the boat at the time of the accident, or made even an estimate of her value at that time; on the contrary, the witness Fisher does not appear to have seen her since the summer of 1872, and the witness Loughney expressly said that he had not seen her since the fall of 1872.

The evidence as to value is therefore reduced to this, that the boat was built in 1866 at a cost of $3,000; that the average life of such a boat is 12 years, and the age of this boat was between six and seven years; that she had $200 of repairs put upon her in the summer of 1872, and was then perfectly sound; that in the autumn of 1872 $1,800 was offered for the boat by Loughney because she was named after his wife, and $2,000 demanded by the plaintiff below; and that she was still sound and seaworthy when lost, but sweated a little.

Even if $1,800 was the value immediately after the repairs, there is no evidence that she was worth that sum after weathering another autumn and winter out of the twelve comprised in her "average life," and when she was in a sweating condition. The uncertainty of her value may be judged from the reason given by her owner for not insuring her, "I didn't feel like it."

And yet in face of all this, the Court below charged the jury as follows (p. 85): "If you conclude * * that

"the plaintiff is entitled to recover, you will find a verdict "in his favor for the value of the barge as it has been "shown by the proofs, and for the net amount of the "freight; *that is*, I believe, *eighteen hundred dollars as "shown*, aside from the testimony of the plaintiff himself, "to have been *the value* of *the barge at the time*, and "ninety dollars the net amount of the freight. So *these "two amounts are the sums which the plaintiff is en- "titled to recover* if you are satisfied that he is entitled to "recover at all."

Aside from the testimony of the plaintiff himself there is no evidence of value, and the Court was in error and under misapprehension of a material fact in so stating to the jury.

It is too clear to need argument that this charge was error. Such evidence of value as there was should have been left to the jury.

It is a familiar rule of law that the jury are the proper judges of damages in common law trials (2 *Greenl. Evid.* § 255).

On exception being taken to this portion of the charge the Court below evidently realized its error, but made no adequate correction of the error. The Court said: "The "Judge did not undertake to fix the value of the barge but "merely referred to the proof relating to it and said the "jury would be justified in finding accordingly."

This remark merely amounts to a declaration by the Judge that in stating that he believed eighteen hundred dollars had been shown to have been the value of the barge at the time of her loss, and in further stating that this amount was the sum which the plaintiff was *entitled to recover* therefor, if he recovered at all, he did not "undertake to fix the value of the barge."

We submit that whatever the Court "undertook" to do, he did in fact fix the value in terms which would inevita-

bly be understood by a jury in that light, and followed implicitly.

Clearly the jury considered themselves instructed, and they obeyed their instructions to the letter.

This charge amounted to a *direction* by the Court as to the amount of damages to be found.

We submit that the error assigned is fully established.

Point VII.

We submit that in cases like these the utmost care should be exercised by the Court that erroneous inferences or ignorances should not govern the verdict of the jury.

If in the instructions of the Court there is any error, there should be a new trial.

What influence that error might have upon the minds of the jury it is impossible to say. The Court cannot say that it could have *no influence*, and its existence entitles us to a reversal of the judgment.

A new trial has been granted where the Court has taken from the jury a question which ought to be submitted to them (3 Wendell [N. Y.] Reports, 418, 420); or if the general charge, though not erroneous, was calculated to mislead (3 Wendell, N. Y., 418; 2 Sweeny's Reports, N. Y., p. 25.)

And a misapprehension by the Judge as to material facts, and a direction to the jury accordingly, is irresistible reason for a new trial (A. K. Marshall, Ky., 76).

Instructions to the jury should not be given in such form as to supersede an inquiry into the facts by the jury.

It is not for the Court to pass upon either the sufficiency or credibility of the evidence.

Canal Co. v. Knapp, 9 Peters, 541-567.

In Owen *v.* Hudson R. R. Co. (35 N. Y. Court of Ap-

peals, p. 516–519) the Court, in directing a new trial, held the following language :

> " It is insisted that the latter part of the Judge's charge " cured and corrected all the prior errors complained of, and " that the jury could not have been misled. If that were " true, it would be an answer to the objection ; but it is not " plain that the jury were not misled by the charge, taken as " a whole."

It was said by the Court in *Toomey* v. *R. R. Co.*, (3 C. B. [N. S.] 146.)

> "Every person who has had any experience in courts of " justice knows very well that a case of this sort against a cor- " poration could be only submitted to the jury with one re- " sult."

We therefore submit that a consideration of the proofs in this cause, a cause where plaintiff below himself admitted that defendant below was not to blame, must lead to the conviction that the jury could only have rendered their verdict under a misconception as to the law applicable to the undertaking in question ; that they could have formed no correct understanding as to the degree of care and diligence required of these plaintiffs in error ; or as to the effect of the neglect of defendant in error himself upon his right to recover ; that they were prejudiced by McCarty's incompetent evidence ; and precluded, by the instructions of the Court, from any exercise of judgment, or any consideration whatever as to the value of the barge.

Point VIII.

The judgment entered below in favor of the defendant in error and against this plaintiff in error should be reversed.

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